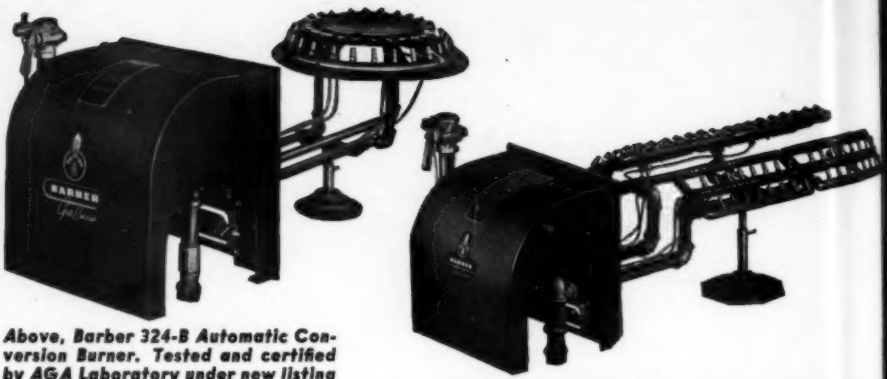
Public Utilities

FORTNIGHTLY

Volume XLVIII No. 2 July 19, 1951

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS



Above, Barber 324-B Automatic Conversion Burner. Tested and certified by AGA Laboratory under new listing requirements.

No. 49-113-B Barber Automatic Burner Assembly

BARBER Gas Conversion BURNERS

Have All These Advantages:

- **Exclusive patented Barber Impinged Jets, with air-injected vacuum premixture, to get the highest combustion efficiency possible.**
- **High temperature "scrubbing" flame applied directly to walls of fire-box —no spreaders, no refractories.**
- **A sufficient range of sizes, in both round and oblong models, to fit properly the requirements of *all* furnaces and boilers (we do not make the incredible claim that *one* size and *shape* burner will operate efficiently in *all* furnaces and boilers).**
- **The correct design, with the right jets, to operate on *any* type of gas fuel.**
- **The finest automatic controls obtainable.**
- **A reputable manufacturer, with a record of over 30 years' responsibility, to stand behind its products, and with capable Barber installation service available nearly everywhere.**

With such a widely preferred and plainly superior product offered to you, why take chances with little known and possibly inferior burner units? No other burner burns like a Barber. Buy Barber and you buy the best.

We also design, develop, test, and manufacture innumerable types and sizes of burner units for all sorts of gas appliances, for industrial, commercial, and household use. We supply hundreds of appliance makers with these standard or special burners, for all kinds of gas. The inclusion of a Barber unit in any such appliance is an unmistakable symbol of QUALITY. Write for our complete Catalog.

THE BARBER GAS BURNER CO., 3682 Superior Avenue, Cleveland 14, Ohio

BARBER BURNERS

For Warm Air Furnaces, Steam and Hot Water Boilers and Other Appliances

Public Utilities FORTNIGHTLY

VOLUME XLVIII JULY 19, 1951 NUMBER 2

ARTICLES

FEATURE SECTIONS

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

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Hitch on to a method that delivers the goods!

Here's the easy way to get a complete, standardized inventory control system—without burdensome research by your staff. Every item of materials and supplies is properly identified, classified and coded to eliminate errors and duplicated efforts.

Naturally, this system will be adapted to your needs and parallel your present procedures. What's more, it will be automatically self-perpetuating.

Let us give you a closer look at the labor-saving efficiency you can expect from simplified paperwork, elimination of needless steps and improved cooperation between departments.

AUTOMATIC INVENTORY CONTROL

- Working stocks reduced with safety, yet adequate stocks of each item maintained at every store point.
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- Physical inventories cycled to eliminate work peaks.

NEW OPERATING EFFICIENCY

- Centralized unit and purchase control automatically takes care of company-wide needs.
- Storekeeper's paperwork held to minimum, giving more time for housekeeping and service to operating department.
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FAST, SIMPLIFIED ACCOUNTING

- Over 75% reduction in unit pricing, stores distribution and other paperwork.
- All postings cross-checked for proof.
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Ask your local representative or send coupon to see a complete file on this subject.

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Please send me on ten-day loan your file MC-729 on the *standardized unit inventory* method for public utilities.

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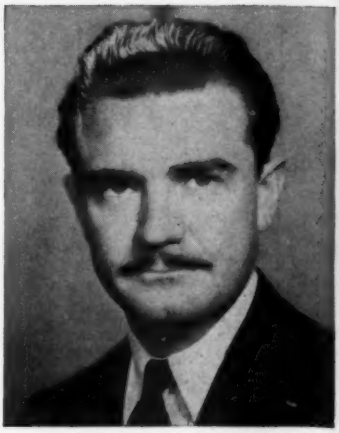
ONE of the romantic instances connected with the discovery of the telephone was the filing of the basic patent application in 1876 by Alexander Graham Bell, just a few hours ahead of a rival application by Professor Gray. While the resulting patent litigation dragged through the courts for years, comparatively little attention has been paid to the multitude of subsequent patents for supplementary service, or improvements, in connection with the use of the telephone.

IT is a safe bet that it wasn't very many days after the original Bell application when somebody thought up ways and means of making telephone service more convenient or satisfactory to the public. The number of telephony patents filed in the Patent Office in Washington, D. C., runs into the thousands. A good many of these represent ingenious and worthwhile research, largely within the telephone industry and to some extent by serious outside technicians. After all, as Arthur W. Page, former vice president of the American Telephone and Telegraph Company, has said, "Telephony was born and raised in the laboratory." Every job in the telephone business is created by technology. The increasing number of jobs has been the result of technology. If the apparatus of telephony had not been constantly improved, the business would never have grown as it has.



J. CARL POINDEXTER

JOHN E. BOULET

BUT there are improvements and improvements. There never has been a revolutionary basic invention which did not trail in its wake a host of less important and even trivial "improvements." The telephone is no exception. Some ideas along these lines are downright "Goldbergs"—the trade name for a patent so complicated or absurd as to be comic paper material.

MORE serious and important has been a series of auxiliary services which have developed in response to an admitted public demand. There is the demand for recording telephone conversations. The demand for the telephone answering device. There is the demand for greater privacy in the use of a telephone in an open room. Some of these demands can be met. Some have to be qualified by conditions, because they may conflict with the rights of others using the telephone service.

AND so there has grown up within the telephone industry a well-founded tradition against the use of so-called "foreign attachments"—meaning devices which are not under the control of the telephone company responsible for the service. The foreign attachment may be useful and worth while, in itself, for the needs of the particular subscriber. But the possibility of interfering with other people's service or interfering with the standards of service, has resulted in regulatory approval of the foreign attachment rule.

THE opening article in this issue represents, to our knowledge, the first comprehensive article, for the lay reader, on the subject of so-called foreign attachments which might be properly nicknamed fringe attachments. It reviews the status of various past and pending controversies, including those which have engaged the attention of the FCC.

HERBERT BRATTER, author of this article, is a well-known professional writer of business and economic articles, who has made his home for some years in Washington, D. C. A graduate of New York City College and Columbia University School of Business, MR. BRATTER was formerly associated with export business in Buenos Aires, and at one time was commercial attache for the U. S. Embassy in Tokyo, and an economic analyst for the U. S. Commerce and Treasury departments. His articles are widely published in business and professional magazines. He has also engaged in marketing research and has appeared before the FCC in connection with radio broadcasting license matters. He is the regular Washington correspondent for *The Banker* (London).

HERBERT BRATTER

* * * *

THE ironic approach is rather unusual for articles in this magazine, but good use is made of the delicate rapier of satire in the article "The Hidden Gold in Municipal Utilities," by J. CARL POINDEXTER, beginning on page 81. A native Virginian, educated at the University of Virginia (BS, MA, PhD), the author has been a professor of economics for some years. He has taught in such schools as William and Mary, Louisiana State University, and is now on the faculty of his alma mater, teaching transportation for the extension division of the University of Virginia. He has written numerous articles on political science, law, and economics, and is an active member of the American Economic Association.

* * * *

DEVELOPING channels of communication is viewed as the crux of the problem of better industrial relations. How to use the intermediate superior and other original approaches to a better understanding between employer and employee is explored in a readable commentary (beginning on page 94) by JOHN E. BOULET, who handles employee communications for the Mississippi Valley Public Service Company. Prior to joining his present organization, MR. BOULET had newspaper and radio experience in Milwaukee and Minneapolis. He assisted in writing the history of the Wisconsin Public Service Corporation (1948) and once edited a magazine for 2,000 power plant workers at the Detroit Edison Company. He is a graduate of the University of California (BA) and the University of Denver (MA).

THE next number of this magazine will be out August 2nd.

The Editors

Coming IN THE NEXT ISSUE

★

CANADIAN HYDRO KEEPS PACE WITH INDUSTRIAL DEVELOPMENT

No country in the world today is expanding industrially at a faster rate than Canada, or developing such a magnitude and diversity of natural resources on which to build further vast industrial expansion. Cyril Bassett, features editor of **The Financial Post**—the Canadian business weekly, tells a first-hand story of Canada's rapid progress in harnessing water for power. No country in the free world has such a vast reserve of hydro.

SOMETHING NEW IN PUBLIC OWNERSHIP

A million shareholders can't be wrong. Recently the American Telephone and Telegraph Company became the first corporation in the world to number its shareholders in seven digits. What this means in terms of industrial democracy is examined as a new and significant form of real "public ownership." J. Louis Donnelly, utility news writer for the New York **Journal of Commerce,** has explored the consequences of this new form of industrial democracy.

UTILITY PUBLIC RELATIONS AND THE PRESS

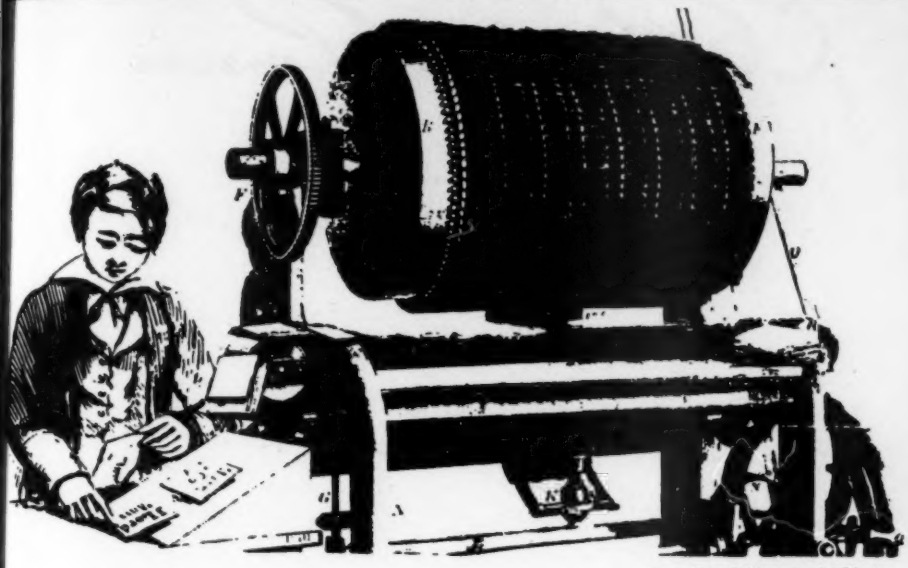
What are the prevailing practices of operating public utility companies in their relations with the press and the public? The use of news specialists, "handouts," and other techniques are surveyed in this article. David Markstein, business writer of New Orleans, personally queried a representative cross section of electric utility executives to determine what is being done along these lines.

OUT OF THE MAILBAG

Just by way of a change, here is an interesting collection of letters received from our subscribers in reaction to articles published in this magazine in recent weeks. Sometimes when the reader "talks back" he has things to say which impress the editors as being of equal importance with the original articles. As to that we will let the other readers be the judge.

★

Also . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.***



Courtesy Bettmann Archives

Rolling out work in ½ the time

IT seems to be an ingrained American characteristic to constantly seek a better, more efficient way of turning out routine work.

Here, for example, is one of the first addressing machines. It was invented in 1858 by an office boy who got mighty tired of writing labels by hand.

Another case in point is this modern machine which has been especially devised for public utilities' use. Up until a few years ago, the job of grouping consumers' bills for usage data was very tedious. The routine consumed hours of a clerical staff's time, and it was costly to management.

Now, however, the Bill Frequency Analyzer, shown below, can do the work in ½ the time. It can analyze as many as 200,000 bills in one day. The final cost to the utility, too, is halved.

Wouldn't you like to know more about this Recording and Statistical Corporation service which can help give you an accurate picture of your consumers' usage situation in a few days' time?

Send for FREE booklet

"The One Step Method of Bill Analysis" tells more about this accurate and economical method of compiling consumers' usage data. Write today.

Recording and Statistical Corporation

100 Sixth Avenue, New York 13, N. Y.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

Excerpt from "Bulletin," published by Pacific Northwest Development Association.

"Every private business that is socialized makes it tougher for those remaining."

RALPH J. BUNCHE
United Nations official.

"Democracy gives no free rides. . . . Integration in the society is a two-way proposition. The more integrated the Negro becomes the heavier will his civic responsibilities become."

M. S. RUKEYSER
Columnist.

"The public respects enlightened self-interest. It admires businessmen who candidly disclose their interest, and then sincerely express their philosophy. Given time, the public rejects phonies in business, finance, and in politics."

EDITORIAL STATEMENT
The Wall Street Journal.

"Either the state exists for the individual or the individual exists for the state. In the latter case you have dictatorship, whether you call it Communism, Fascism, or Peronism, and how far the dictator goes depends on his own ruthlessness and the character of the people under him."

BEN MOREELL
Chairman, Jones & Laughlin Steel Corporation.

"Whatever the sacrifice, our government must live within its income. And the amount of that income which is taken from the people must be drastically reduced . . . In short, we must demand that the government confine itself to the primary functions of protecting the life, the liberty, and the property of the individual."

BRUCE BARTON
Columnist.

"I myself am not so much concerned with the lack of freedom abroad as with the fact that every day's newspapers and radio broadcasts bring us the sorrowful news that we have less freedom here at home than we had twenty-four hours before. Controls, taxes, and past and future foreign wars, are making us the pawns of a bureaucratic, militaristic state."

R. C. LEFFINGWELL
Retiring head, J. P. Morgan & Company.

"The level of interest rates adopted for financing the second world war was too low. The extreme cheap money policy was inflationary. Taken in conjunction with the high level of taxation, and full taxability of bonds, it was not conducive to saving and investment. High taxes and low-interest rates combined to make the yield of government bonds insufficiently attractive to investors other than exempt and semitax-exempt institutions."

SIR ERNEST BENN
London publisher.

"Politics is the art of looking for trouble, finding it whether it exists or not, diagnosing it wrongly, and applying the wrong remedy."

ROGER M. BLOUGH
Executive vice president, United States Steel Company.

"In the last analysis, our production is our greatest means of defense and our best means of achieving that production is through adequate profit incentives."

JAMES E. SHELTON
President, American Bankers Association.

"[American citizens] must resist all attempts to use the present emergency as a means of hastening a government-managed and controlled economy upon our country."

CHARLES E. WILSON
Director, Office of Defense Mobilization.

"Of all the problems of defense mobilization I would say that the fight against inflation, the fight to preserve the value of the dollar, is the most subtle, the most difficult, and the most important."

CLARENCE B. RANDALL
President, Inland Steel Company.

"Free enterprise has its obligations to the public, and it must be policed by free markets—honest, real competition. Anyone asking for price-fixing arrangements is heading straight for nationalization. If you want to put an end to free enterprise, go ahead with limitations on free markets."

R. L. WILLIAMS
President, Chicago & North Western Railway System.

"I believe the American people can best strengthen the nation by re-examination of the free enterprise system which has produced the highest known standard of living and strongest nation in history, and by active reaffirmation of the principles which have made this possible. Mere lip service is futile. The people must think and live these principles and ideals."

EDITORIAL STATEMENT
The New York Times.

"But the one thing without which life is not worth living we must not give up. We must not give up hope. We must not give up hope of a world in which the ethics of Nazareth will prevail, in which all men will deal with each other as brothers, and in which fear will be cast out. We will mobilize our resources and form our battalions in firm resolution but not in hatred."

RICHARD S. REYNOLDS, JR.
President, Reynolds Metals Company.

"On the home front inflation is one of the most powerful weapons on the side of the Communists. The only real antidote to inflation is production. Consequently the burden placed on American industry is one of producing enough for both guns and butter. In dealing with the Russians, therefore, cutting civilian consumption to provide essential materials for military needs must be regarded as a temporary expedient only."

Slash hauling costs with dependable DODGE "Job-Rated" Trucks!

Your Dodge "*Job-Rated*" truck will save time on the road with a power-packed engine. You'll save on oil and gas consumption. And you'll save on upkeep costs because your truck will *fit* the job!

Your Dodge truck will give you dependable year-'round service, too. You'll find new braking safety and easier bad-weather starting. You'll also enjoy new driver comfort and improved handling ease—plus a host of other brand-new features!

What's more, you can get gyrol Fluid Drive! This Dodge exclusive on ½-, ¾-, and 1-ton models reduces wear on over 80 vital parts . . . prolongs truck life . . . makes driving a breeze!

See your nearby Dodge dealer and find out how you can be dollars ahead with a Dodge "*Job-Rated*" truck! Drop in soon!

How Dodge trucks are "Job-Rated" for utility operations

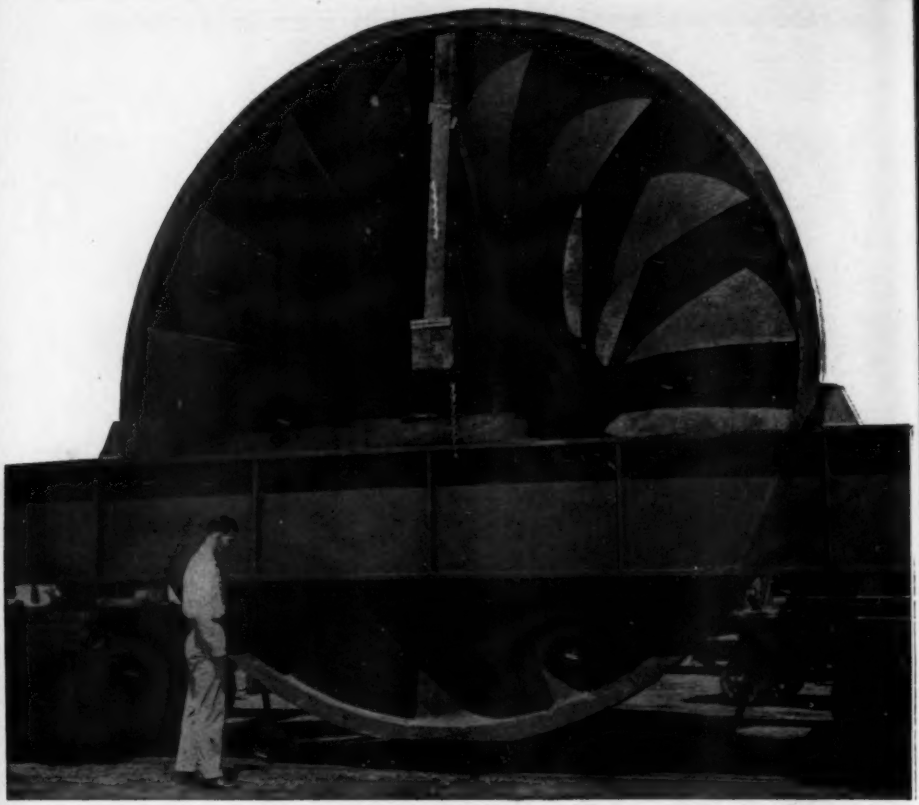
A Dodge "*Job-Rated*" truck is engineered *at the factory* to fit a specific job . . . save you money . . . last longer.

Every unit from engine to rear axle is "*Job-Rated*" — factory-engineered to haul a specific load over the roads you travel and at the speeds you require.

Every unit that SUPPORTS the load— frame, axles, springs, wheels, tires, and others—is engineered right to provide the strength and capacity needed.

Every unit that MOVES the load— engine, clutch, transmission, propeller shaft, rear axle, and others—is engineered right to meet a particular operating condition.

"Job-Rated" TRUCKS DO THE MOST FOR YOU



FACILITIES FOR THE SMALLEST OR THE LARGEST

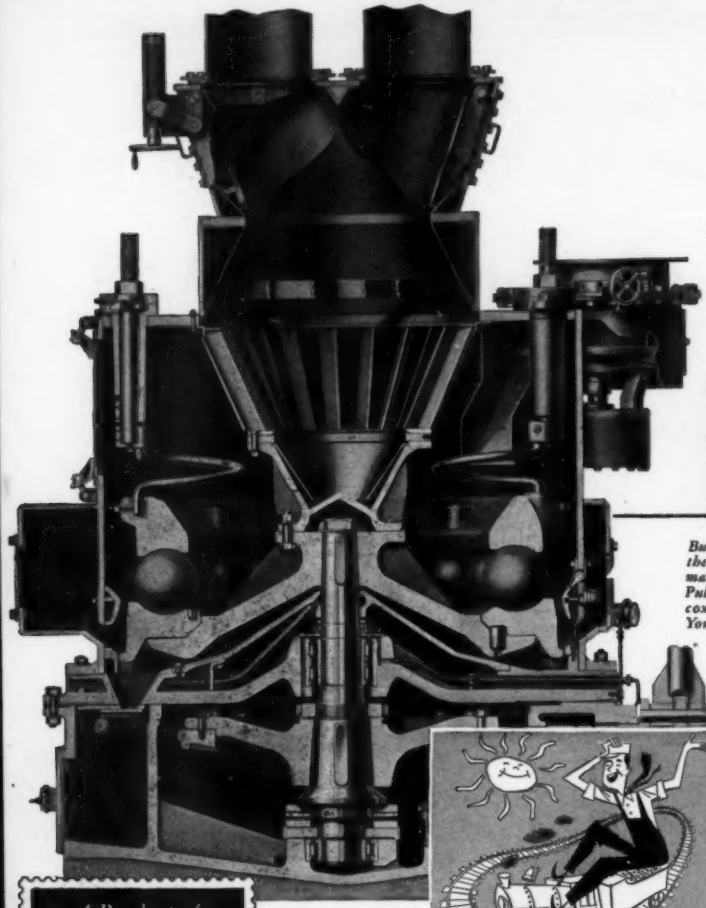
The 225-acre Newport News plant includes plate steel and machine shops equipped with a complete variety of tools to fabricate items of water power equipment of any size. Contracts received by Newport News for hydraulic turbines with an aggregate rated output in excess of 7,000,000 horsepower have included units as high as 165,000 horsepower and as low as 500 horsepower.

Supplementing the extensive facilities are the equally important experienced and skilled personnel at Newport News to design and build such equipment.

Your inquiries for hydraulic turbines of any size will receive prompt attention.

Write for illustrated booklet on water power equipment.

NEWPORT NEWS
SHIPBUILDING AND DRY DOCK CO.
NEWPORT NEWS, VIRGINIA



Bulletin G-57 illustrates and describe the design, construction, operating, a maintenance features of the Type E Pulverizer. Write: The Babcock & Wilcox Company, 85 Liberty Street, New York 6, New York.

A Product of B&W Engineering for Economy

Recirculating Load—Dries as It Grinds

Recirculation of fines within the mill gives repeated, quick-drying contact with large masses of heated air and metal . . . produces proper fineness at all loads, even with coal as wet as it can get. Fines are classified in the mill.

Uniform Performance Regardless Of Wear

Balls and grinding rings w together . . . assure uniform fi ness regardless of attrition of grinding elements . . . fine automatically increases at duced loads.

A big asset in *low-cost* power generation

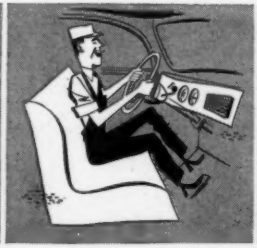
The only accurate measure of pulverizer efficiency—*and ultimate cost*—is a function of availability, plus combined materials and labor maintenance per ton of product over long periods of continuous operation. B&W recently surveyed a representative group of utilities, covering a wide geographical area and broad range of coals. More than 100 B&W Type E mills were reported in service from one to ten years, and with aggregate product of 25 million tons:

- Average Availability: 96.5%
- Average total maintenance cost per ton: 3.12 cents

It will pay you to remember this outstanding—and typical—history of dependable, low-cost performance when considering your next pulverizer installation.

Blows Clean Air—Saves Wear and Tear

Unique in pressurized operation, the Type E Pulverizer requires remarkably little maintenance of the primary fan, because it blows only clean air . . . is not subject to the damaging abrasion of entrained particles.



One-Point Variable Fuel—Air Control

Like the accelerator on your automobile . . . assures proper coal-to-air mixture . . . produces desired rate of steam generation over a wide range with coal conditions suitable for sustained high combustion efficiency.

Low Power Consumption

Ball-and-ring grinding, antifriction bearings, pressure lubrication, and automatic rejection of ungrindable materials make possible high output with minimum power demand.

Outstanding Performance Record

Availability and maintenance economy beyond today's most exacting requirements are proved in over 1300 Type E Pulverizer installations.

Helping Industry Cut Steam Costs Since 1867

BABCOCK & WILCOX

IF IT FLIES AFTER TH

With extensive damage in a critical wing area, this fighter interceptor returned safely to its Korean base.

IT WILL RIDE LIKE THIS

One of 30 street service bodies operated by Washington Gas Light Company.

TOUGH, LIGHTWEIGHT, ALL ALUMINUM

THOMPSON UTILITY BODIES

BUILT FOR MANY YEARS OF DEPENDABLE SERVICE UNDER RUGGED OPERATING CONDITIONS

While supplies of Aluminum and Steel Bodies are limited
Place a few THOMPSON units in your service
Compare their operating costs with your steel units
Let FACTS decide your future Policy

THOMPSON TRAILER CORP.

Pikesville, Maryland

THOMPSON TRAILER CORP.
PIKESVILLE, MARYLAND

☐ Have Representative Call
☐ Send Full Information

Company Name .....

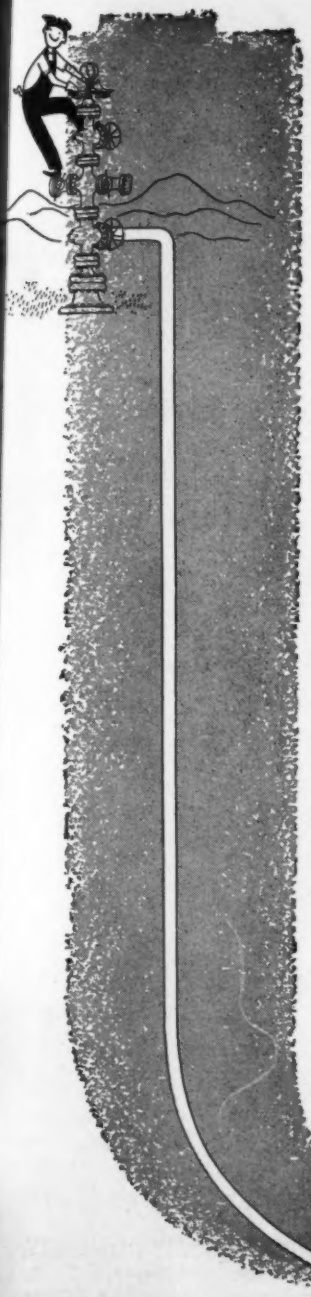
Attention .....

Address .....

more trench in more places at less cost

CLEVELANDS

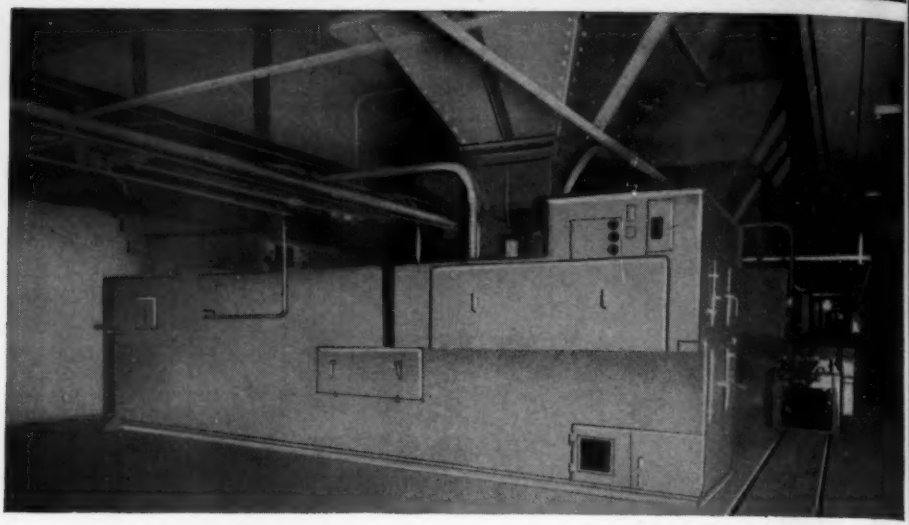
More trench because CLEVELANDS dig faster and cleaner, because each CLEVELAND model keeps busier on more different kinds of jobs. More trench because rugged CLEVELANDS stay out of the repair shop, give you a 12-month digging season. More places because compact CLEVELANDS are built to maneuver easily among narrow city clearances, because low ground pressure and smooth-pad crawlers protect expensive walks and lawns. More places because CLEVELANDS load quickly for fast jumps between jobs. Less cost because of CLEVELANDS proved longer service life, plus established lower operating and maintenance expense. Get details from your local distributor today. The Cleveland Trencher Co., 20100 St. Clair Avenue, Cleveland 17, Ohio.



SERVING THE PUBLIC AND INDUSTRY 24 HOURS A DAY

COLUMBIA GAS SYSTEM

The Manufacturers Light and Heat Company
United Fuel Gas Company
The Ohio Fuel Gas Company
Atlantic Seaboard Corporation
Amere Gas Utilities Company
Virginia Gas Distribution Corporation
Virginia Gas Transmission Corporation
Big Marsh Oil Company
Central Kentucky Natural Gas Company
Binghamton Gas Works
Cumberland and Allegheny Gas Company
Eastern Pipe Line Company
Home Gas Company
The Keystone Gas Company, Inc.
Natural Gas Company of West Virginia
The Preston Oil Company



SEWAREN
KEYNOTES EFFICIENCY
RICHARDSON
DENOTES COMPLIANCE

Efficiency and simplicity keynoted the design and construction of Public Service Electric and Gas Company's new, 450,000 kw. Sewaren Generating Station. To keep building and operating costs down, four semi-outdoor type boilers supply steam at 1050° F., the highest temperature to be utilized commercially. To keep tab on coal consumption, 12 self-testing, elongated type, Richardson Automatic Coal Scales were installed.

An 1800-ton bunker supplies coal for each boiler. Four of the 12 Richardson Scales weigh and feed coal to three pulverizers, each of which is fed from either of two scales. When required, coal can be by-passed through a motor operated gate direct to the pulverizer or to a shuttle conveyor for delivery to adjacent boilers. Dust-proof construction of scales withstands pressure equal to 40 inches of water, confines coal dust to scale housing, contributes substantially to cleanliness of the plant.

For over 40 years Richardson Automatic Coal Scales have been helping central stations and industrials eliminate preventable coal waste and produce more power at less cost ...a good reason for calling on Richardson when you plan to modernize your present plant or build a new one.

3 BULLETINS AVAILABLE

Send For Them Today For Complete Information On:

Model K-39, for pressure tight (up to 60" of water), large capacity service—400-500 lbs. per discharge—Bulletin No. 0250

EE39, for dust tight, average service—200-300 lbs. per discharge—Bulletin No. 0150

Monorate, non-segregating coal distributor —Bulletin No. 1349

Richardson

MATERIALS HANDLING BY WEIGHT SINCE 1902

5867

RICHARDSON SCALE COMPANY
Clifton, New Jersey

Atlanta • Boston • Buffalo • Chicago
Cincinnati • Detroit • Houston • Minneapolis
New York • Omaha • Philadelphia • Pittsburgh
San Francisco • Wichita • Montreal • Toronto

Here's one way to save critical **MANPOWER and MATERIALS**

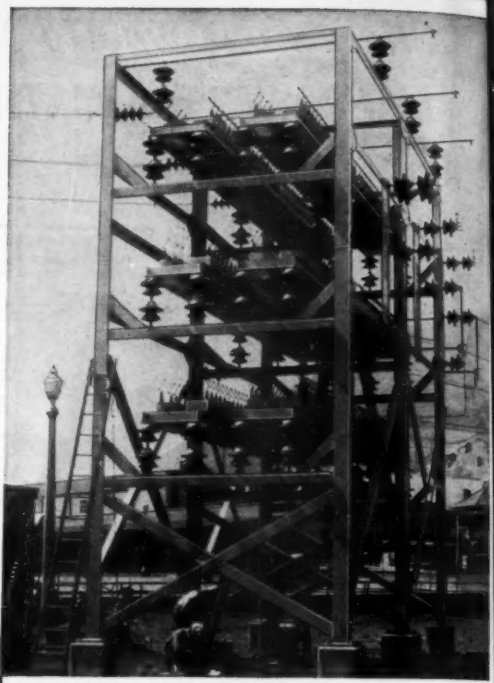
The Leece-Neville ALTERNATOR SYSTEM delivers 25 to 35 amperes **with engine idling.** On your 2-way radio trucks and cars, this means important savings in critical manpower and materials. The L-N Alternator saves gas and oil, saves engine repairs, saves radio servicing, saves batteries. Ample amperes and accurate voltage of the L-N System are the answer. Thousands of Utility Company vehicles are equipped with the L-N Alternator System. If you would like to have the facts, write

The Leece-Neville Company,
Cleveland 14, Ohio.

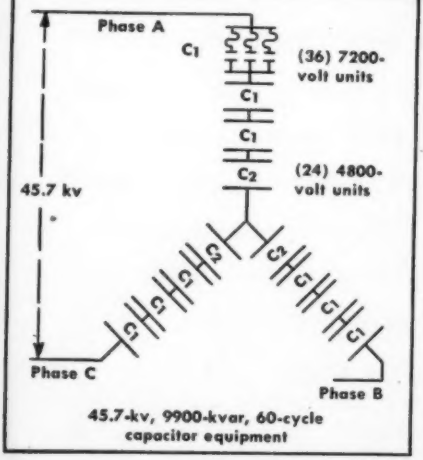
Leece-Neville

Capacitors now in use for 23 kv and above

Open-type equipments, for voltages up to 230 kv, consist of 25-kvar outdoor units connected in series-parallel, and mounted on insulators in galvanized-steel structures.



This 9900-kvar General Electric capacitor equipment, operating at 45.7 kv, 3-phase, has recently been installed in West Virginia. It consists of 396 individual 25-kvar outdoor capacitors, connected as shown in the diagram below.



45.7-kv, 9900-kvar, 60-cycle capacitor equipment

This connection diagram applies to the capacitor equipment pictured above

General Electric is now in a position to furnish capacitor equipments for all transmission-circuit voltages (equipments have already been furnished rated as high as 124 kv). These equipments are used on high-voltage circuits to supply bulk kilovars and thus re-enforce the sub-transmission voltages and also reduce thermal loading of substations and generators.

The capacitors used in these equipments are General Electric, outdoor 25-kvar units, rated 2400 to 7960 volts, depending on the circuit voltage. Units are connected in series-parallel to attain the desired voltage and kvar ratings. Individual bushing-mounted fuses are supplied for each unit.

For full information, get in touch with your G-E Apparatus Sales Office. General Electric Company, Schenectady 5, N. Y.

407-33E

GENERAL ELECTRIC

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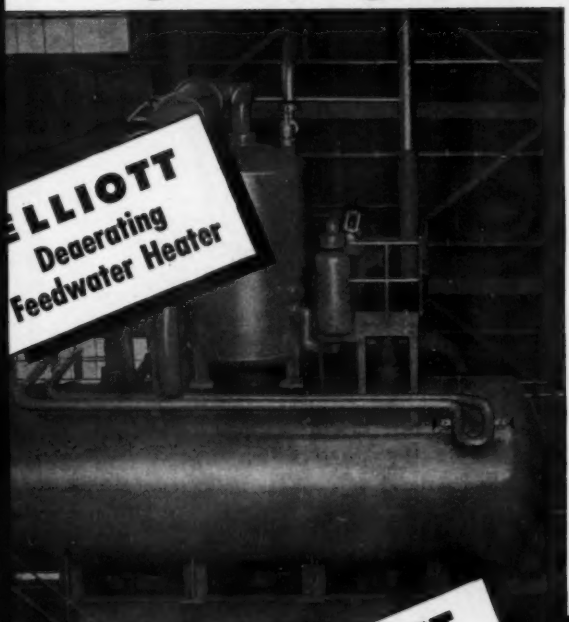
. . . pacemaker
power generating equipme



This photo shows Elliott tea
at its best — three units vital t
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a single utility plant. In the same
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also an Elliott surface condense
an Elliott evaporator pre-heater.

Wherever quality performanc
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ELLIOTT COMPA

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Plants at: JEANNETTE, PA. • RIDGWA
AMPERE, N. J. • SPRINGFIELD
NEWARK, N. J.

DISTRICT OFFICES IN PRINCIPAL C

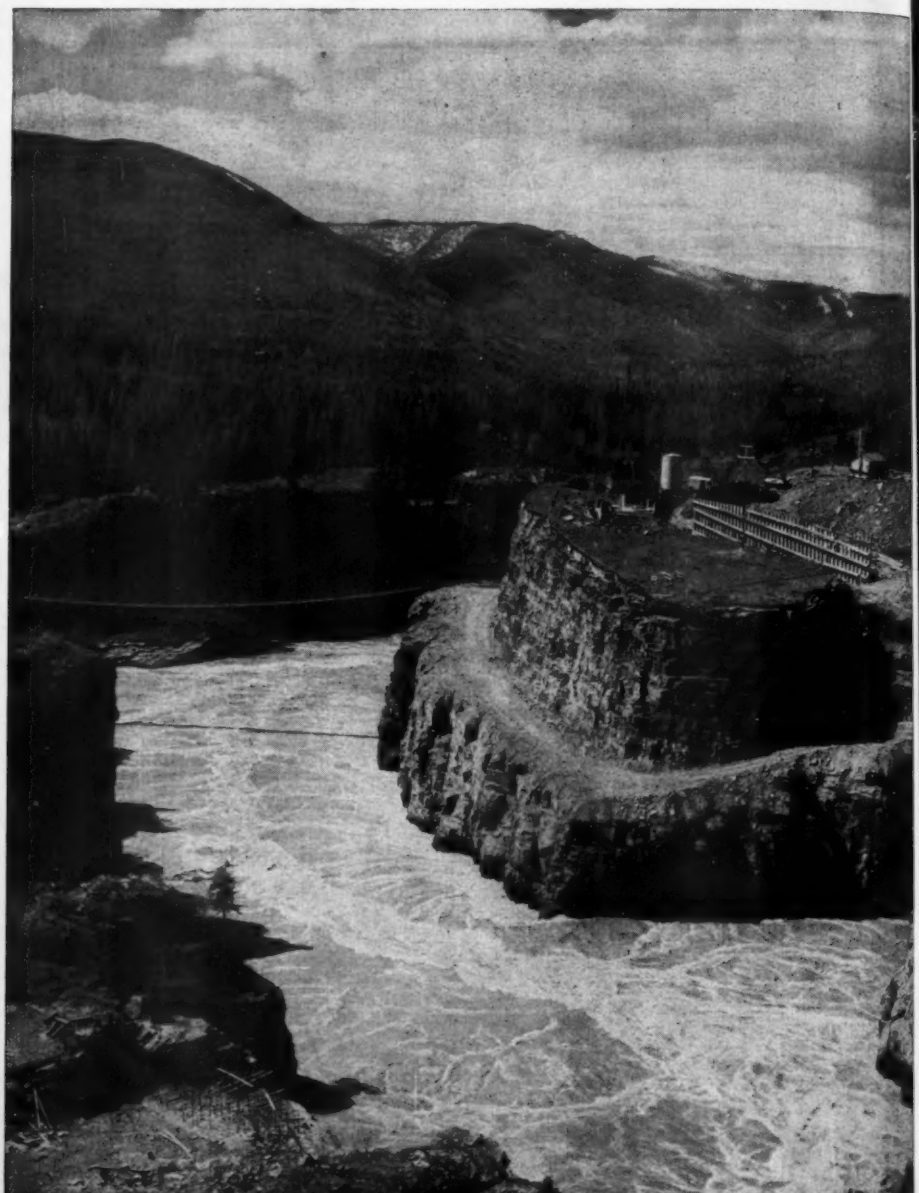
Utilities Almanack

July

19	Th	¶ *Tennessee Liquefied Petroleum Gas Association will hold annual convention, Nashville, Tenn., Aug. 5, 6, 1951.*
20	F	¶ *American Institute of Electrical Engineers will hold Pacific general meeting, Portland, Ore., Aug. 20–23, 1951.*
21	Sa	¶ *Pacific Electronic Exhibit will be held at the Civic Auditorium, San Francisco, Cal., Aug. 22–24, 1951.*
22	S	¶ *Illuminating Engineering Society will hold national technical conference, Washington, D. C., Aug. 27–30, 1951.*
23	M	¶ *Western Liquefied Petroleum Gas Service School will be held, Berkeley, Cal., Aug. 29–31, 1951.*
24	Tu	¶ *Northern California Electrical Bureau will hold annual exposition, San Francisco, Cal., Sept. 1–9, 1951.*
25	W	¶ *Pacific Coast Gas Association will hold annual convention, San Francisco, Cal., Sept. 4–6, 1951.*
26	Th	¶ *Rocky Mountain Electrical League will hold fall convention, Santa Fe, N. M., Sept. 9–12, 1951.*
27	F	¶ *Michigan Independent Telephone Association will hold annual convention, Lansing, Mich., Sept. 12, 13, 1951.*
28	Sa	¶ *Midwest gas school and conference will be held, Iowa State College, Ames, Iowa, Sept. 13, 14, 1951.*
29	S	¶ *Tennessee Independent Telephone Association will hold annual convention, Nashville, Tenn., Sept. 19, 20, 1951.*
30	M	¶ *Public Information Program will hold second annual workshop conference, Chicago, Ill., Sept. 20, 21, 1951.*
31	Tu	¶ *Arkansas Telephone Association will hold annual convention, Hot Springs, Ark., Sept. 24, 25, 1951.*

August

1	W	¶ *American Society of Mechanical Engineers will hold fall meeting, Minneapolis, Minn., Sept. 25–28, 1951.*



Courtesy, Washington Water Power Company

Future Site of Cabinet Gorge Dam

Public Utilities
FORTNIGHTLY

VOL. XLVIII No. 2 JULY 19, 1951

Fringe Attachments on Telephone Service

Since the very birth of telephone service, the industry has always insisted on providing and retaining control of all service equipment used by the subscriber. The reason for this rule against foreign attachments—meaning equipment owned or installed by the subscriber—is demonstrated in a recent flurry of complications involving numerous gadgets connected with telephone service.

By HERBERT BRATTER*

WHEN in connection with the RFC scandal President Truman was reported to have used some forthright, if not salty, language during a telephone conversation with Senator Charles Tobey of New Hampshire, and then learned that the Senator had had the whole conversation taken down on a recording machine, the President got a shock. Probably the Republican legislator did not feel that he was doing anything unusual. Recording devices are commonly used on Capitol Hill to record telephone conversations. The practice is equally common elsewhere in Washington. The point about the Truman-Tobey talk was that the recording turned out to be illegal, because there was no warning signal—no "beep"—as required by the FCC.

Senator Tobey probably did not

*For personal note, see "Pages with the Editors."

know this. Neither did the President. But as soon as Truman discovered what had happened, he found out about the situation in a hurry. The story goes that the telephone company sent a man around to attach the Senator's recorder to his telephone in a legal manner—meaning with a built-in "beep" signal.

Just how general is the use of "beepless" telephone recorders in Washington there is no way of finding out. Certainly, there are many Washingtonians who for years have not trusted the privacy of the telephone, especially when talking to government bureaus. It is said, for instance, that a certain prominent broadcaster who receives news tips via the telephone takes the precaution of calling back from some telephone booth before holding a conversation.

CERTAINLY the President need not have been shocked at the number of "beepless" recorders used on Capitol Hill. Reliable reports have it that he could have walked around his own White House offices and seen plenty of the same. The Pentagon is reportedly loaded with such equipment, but because of their responsibility for the national security, maybe the "high brass" personalities are in a different category. After all, the "beepless" recorder is simply an extension of the very old technique of having a stenographer surreptitiously (or otherwise) take down telephone conversations. The State Department recently made good use of such informal note taking in its effort to recall for a congressional committee just what was said at Wake Island.

Certainly in Washington offices the taking down of telephone conversations is widespread. Often this is done by a secretary and the popular impression prevails that it breaks no law. But also it is done with illegal "beepless" recording devices. In either case, unless the other party tells you about it, you have no way of knowing that what you say is being taken down.

Recording devices are only one of the headaches of the telephone companies. Among others are the Hush-A-Phone, electronic secretaries, and a host of gadgets which are continually being patented. Over the years, hundreds of devices have been developed for use in connection with the telephone—more than 200 since the advent of the handset alone. Where the device is not provided by the telephone companies, it is regarded by them as a "foreign attachment" and is frowned upon. George Washington was against entangling alliances. The Bell system is against foreign attachments. So is the independent branch of the telephone utility industry.

Attitude of the Bell System

THE telephone companies are very jealous of that section of their tariffs which provides that

> No equipment, apparatus, circuit, or device not furnished by the telephone company shall be attached to or connected with the facilities furnished by the telephone company, whether physically, by induction, or otherwise, except as provided in this tariff. In case any such unauthorized attachment is made, the telephone company shall have the right to remove or disconnect the same; or to suspend the service during the continuance of the attachment or connection; or to terminate the service.

FRINGE ATTACHMENTS ON TELEPHONE SERVICE

In connection with a recent FCC hearing, the Bell system companies explained their position roughly as follows:

For the telephone companies to meet their responsibility to the public and to regulatory bodies, they must have undivided and complete control of their facilities. The telephone system is complex and delicate. If into its intricate network of devices people were free to introduce devices for commercial exploitation, it would result in interference with the operation of equipment, increased cost of maintenance, and degradation of service. There can be no halfway measures about the prohibition of foreign attachments.

Furthermore, the explanation continues, the Bell system companies have been alert to the advantage of new ideas that have come along, whether originating inside or outside the organization—since they naturally want to meet the communications needs of their customers. It has rarely been found necessary to discontinue service in connection with foreign attachments. Customers themselves appreciate this, once they understand the facts. A relaxation of the rule against foreign attachments for one manufacturer would lead to a flood of applications from others.

NATURALLY, the inventors and owners of proposed attachments do not always accept the telephone industry's position as outlined above. As a consequence, appeals have occasionally been made to the regulatory authorities, including the FCC. In some cases these bodies have sided with the industry. In others, the telephone companies have had to modify their position to the extent of providing the new services for which a sufficient demand exists and which are technically feasible. But the commissions have always approved the principle of the rule.

It is important to remember in this connection, however, that the telephone industry has never abandoned its "no foreign attachment" rule. Although it may occasionally (as in the telephone answering device noted later) decide that the new "fringe" service ought to be provided, it has never conceded the important point that the service should be provided by the subscriber on his own responsibility. In such cases the telephone company itself agrees to provide the service in question. Since this is done on the industry's traditional service fee basis—whereby the subscriber does not buy equipment but pays for the use of it—no departure from principle can be established. In other words, by making the attachment its own, the

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company no longer has to contend with a "foreign attachment."

The Beep

RECORDING devices equipped with automatic tone-warning signals (beeps) are legal, pursuant to the FCC's report of March 24, 1947, and subsequent orders. The "beep," which functions only where there is a physical connection between the recording device and the telephone equipment, is required to conform to certain standard characteristics laid down by the FCC and to be installed by the telephone company concerned in each instance.

Devices to record telephone conversations have been the subject of experimentation for more than three decades. Telephone recorders are electronic devices for picking up electric signals from the telephone line, amplifying them, and recording them on cylinders, discs, belts, or wires. Power for the recorders is obtained from the electric power circuits on the users' premises. The three methods of recording are acoustic, inductive, and direct physical connection.

Legitimate uses of recording devices in government and business are many. They are used to record orders telephoned in by salesmen, stories telephoned to newspapers by reporters, contract negotiations, railroad reports on freight loadings, weather reports by steamship companies, financial and credit information, long-distance telephone conferences, and the like. Lawyers, accountants, doctors, engineers, insurance and other brokers, hospitals, printers, transportation companies, and others are among the users.

Telephone companies have always maintained that recording devices are "foreign attachments," which by nature may interfere with the privacy of telephone conversations and which, if not properly attached, may impair the quality of telephone service or cause actual damage. During the FCC hearings, therefore, the Bell system took the position that, if recording devices were to be authorized by the FCC, the device connecting the recorder to the telephone circuit be furnished, installed, and maintained by the telephone companies.

The position taken by the manufacturers of recording devices during the FCC hearings was that such devices were already in extensive use and great demand for entirely legitimate purposes; that such use was being hampered if not prevented by tariff restrictions; and that the privacy argument could be answered with a satisfactory notification to users.

FOLLOWING the hearings, the FCC ruled that recording devices are not detrimental to the quality of telephone service, if properly connected to the telephone circuits. The FCC noted that recording devices were recognized as a modern and legitimate aid to government and commerce and should be permitted with safeguards as to privacy through a tone-warning signal. It determined that a real demand for recording devices existed, and that they should be authorized; but that an engineering conference should be held to determine the engineering characteristics and other technical questions before the FCC should issue its final order. At this conference the beep was recommended. Thereafter, in Novem-

Preserving the Spoken Word

"DEVICES to record telephone conversations have been the subject of experimentation for more than three decades. Telephone recorders are electronic devices for picking up electric signals from the telephone line, amplifying them, and recording them on cylinders, discs, belts, or wires. Power for the recorders is obtained from the electric power circuits on the users' premises."

ber, 1947, the FCC issued its specifications for the beep, followed in May, 1948, by modifications of its order.

In accordance with the FCC's order, the telephone companies have filed tariff schedules permitting the use of recorder devices equipped with automatic recorder tone devices. Similar tariffs have been filed with the state commissions. On March 28, 1951, the FCC issued a statement frowning upon the widespread current use of inductive-type recorders, from which is quoted in part:

> No provision is made in the above tariff schedules for the use of recorders operated on the inductive principle, as distinguished from a direct physical connection to the telephone line. It is the commission understanding that no tone-warning device has yet been developed which is able to give a warning tone on the telephone circuit when being used with an inductive-type recorder. Accordingly, until such time as a tone-warning device of this nature is available and installed, the use of an inductive recording device in connection with interstate and foreign message toll telephone service would appear to be contrary to the orders of the commission and the tariff regulations filed pursuant thereto by the telephone companies.
>
> Data made available to the commission in connection with a recent and informal investigation indicate that widespread violations of the requirements of the orders of the commission pertaining to the use of the tone-warning signal, and the tariff regulations filed pursuant thereto by the telephone companies may exist. Accordingly, the commission has this date sent letters to the American Telephone and Telegraph Company and the United States Independent Telephone Association, requesting that measures be taken to assure vigorous enforcement by the telephone industry of the applicable tariffs.

AN idea of the possible scale of the widespread violations was given during a recent FCC informal investi-

gation. This showed that between 20,000 and 25,000 recorders which could be physically connected are now probably in use, whereas only about 5,000 recorder-connector units have been installed by the phone companies. Another 25,000 acoustic and inductive recorders may be in use. All those operated without the beep are illegal, whether operated by private parties, the government, or a member of Congress.

How to enforce the beep edict remains a problem. Only if the recording device is discovered will the telephone company be in a position to suspend or discontinue service.

As a matter of law, use of a beepless recorder on telephone conversations in interstate commerce may be a violation of § 502 of the Federal Communications Act and subject to a fine of $500 a day. Yet there has been no application of this provision. The FCC informs inquirers that it has been making strenuous efforts to get the tariffs enforced. These efforts consist of urging the telephone companies to enforce the tariffs and to supply FCC with certain details of their enforcement activities. The manufacturers of such recorders as the Soundscriber and Dictaphone doubtless have records of those who have bought the devices. But neither the FCC nor the telephone companies appear to have any power to demand those records. Nor is the possession of such a machine, widely used for office dictation, evidence that it is being illegally used to take down telephone conversations.

Hush-A-Phone

ON February 14, 1951, the FCC's initial decision on the Hush-A-Phone Case was issued. Since then exceptions have been filed on behalf of the manufacturer. Should the decision be made final and an appeal taken, the FCC, pending the outcome of the case, may suspend its February 14th order, or the court may effect a suspension. Meanwhile, the Hush-A-Phone stands condemned by the FCC. That is, the telephone companies are not compelled to permit the use of this instrument.

The Hush-A-Phone has been on the market for a quarter of a century. It is a device which snaps on to the telephone instrument to form a cup-like shield around the transmitter, but unconnected with the telephone circuit physically or electrically. A person using the device may confine his voice so that others in his vicinity cannot hear him. From October, 1921, through 1949 net sales of Hush-A-Phones totaled nearly 126,000. The telephone companies have long frowned upon this attachment on the grounds its use would violate the tariffs, impair the service, and that there is no appreciable demand for it. Privacy, while desirable, is obtainable in other ways with telephone company help.

The initial decision of the FCC reported that the Hush-A-Phone does no consequential physical harm to telephone company equipment. But it does impair intelligibility when privacy is sought, the FCC held.

IN its conclusions the FCC said that the telephone companies "correctly construe their foreign attachment tariff regulations . . . as prohibiting telephone users from using Hush-A-Phone devices in connection with telephone facilities of defendants."

The fact that the Hush-A-Phone is not electrical does not alter the foregoing, FCC added. Quoting further:

> The question which is here presented is whether defendants' foreign attachment tariff regulations are unjust and unreasonable to the extent that they prohibit the use of the Hush-A-Phone device in connection with interstate and foreign telephone service. Inasmuch as the unrestricted use of foreign attachments by the public may result in impairment to the quality and efficiency of telephone service, damage to telephone plant and facilities, or injury to telephone company personnel, it is necessary and proper that the use of foreign attachments be subject to control by the defendants through reasonable tariff regulations.
>
> . . . On the basis of complainants' sales data and depositions, however, it appears that the use of the Hush-A-Phone is in some demand. It also appears that the use of the device affords some measure of privacy, as well as a quieter telephone wire by reason of the exclusion of surrounding noise; and that no physical damage of any consequence results to defendants' facilities where the Hush-A-Phone is used. But it is clear from the record that the use of the Hush-A-Phone for the primary purpose for which it was designed — privacy — is accompanied by an impairment in the quality of telephone transmission. Such impairment of quality takes the form of reduced intelligibility of the Hush-A-Phone user's speech as it reaches the ear of the intended listener, as a result of the alterations of the components of such speech which take place as it passes through the acoustical chamber of the Hush-A-Phone into the telephone transmitter. Related to this decrease in intelligibility is the impairment of the level of transmission and the consequent reception of speech sounds passing over the telephone circuit through the Hush-A-Phone. It is not necessary to affix a precise figure to the amount of impairment caused by the device; it is significant that as the amount of privacy derived from the Hush-A-Phone increases, the user's speech becomes increasingly unintelligible. The unrestricted use of the Hush-A-Phone could result in a general deterioration of the quality of the interstate and foreign telephone service. Accordingly, it is not an unjust and unreasonable practice upon the part of the defendants to prohibit its use in connection with telephone service.

THE decision reveals FCC policy toward new devices and attachments in general. Demand, it states, is in a sense a measure of need but "it is not the public demand, as such, which determines the propriety of permitting the intrusion of a particular device into the telephone system, but its effect, as found by this commission, upon the quality and cost of interstate and foreign telephone service, with all its relevant elements weighed in the appraisal." In many instances, FCC continues, demand may run behind the pioneering efforts of inventors. Also,

¶ "IN *the Patent Office in Washington a suite of offices is required to house the indexes to telephony patents, the number of which by now runs into the thousands. A good many of these are in the nature of gadgets and novelties. Some are outright 'Goldbergs'—a trade name for a patent so complicated or absurd as to be comic paper material.*"

in some instances, demand may be occasioned for new devices whose overall effects, however superficially attractive, would be harmful to the telephone system and "degrade the service rendered by it." The FCC expresses the belief that the Hush-A-Phone is in the latter category. It regards the case made by the Hush-A-Phone Corporation for its device "which has a direct effect upon communication itself" as inadequate (and reveals that the commission would be less exacting in a case where a device is only indirectly related to communication).

The initial decision of the FCC goes into a number of points and contentions of the complainant which space here does not permit reviewing. Some of these contentions were on legal points, among them the contention that the telephone companies' tariffs relating to the Hush-A-Phone are unjust, unreasonable, and unclear, because under them the companies reserve discretion as to enforcement against any particular subscriber. In other words, in effect, the telephone companies may and do exercise discretion between different subscribers using such attachments in regard to suspension or discontinuance of telephone service. The initial decision found, in effect, that the tariffs put the subscribers on notice about the foreign attachment rule, and that the telephone company must have some discretion in dealing with specific cases. Final settlement of the question is still awaited.

Decisions Awaited on Answering Devices

THE FCC this year has held a hearing on the subject of various telephone answering devices but has not yet published its initial decision. Several manufacturers of such devices have complained to the FCC because of the refusal of the American Telephone and Telegraph Company and others to permit the use of such equipment by telephone subscribers. One such device is the "Telemagnet," a product of the Jordaphone Corporation of America and the Mohawk Business Machines Corporation. A competing device is the "Telemaster," made by the Telemaster Company, while still another is offered by the Electronic Secretary, Inc. The hearing was completed in March, 1951.

In a special class is the one-way receiver which does not use telephone service at all and is really a substitute for an answering device. In January, 1951, FCC hearings were held in the case of Telanswerphone, Inc., and Thomas L. Smith, Jr., applicants for construction permits in the Domestic Public Land Mobile Radio Service at Washington, D. C. In 1948, Telanswerphone was granted an experimental construction permit for a radio station to test the feasibility of a one-way transmission system to contact doctors carrying portable receivers. Each such doctor would have a code number which could be broadcast at intervals by a fixed transmitter until he responds by telephone.

The Telephone Industry Position On Answering Devices

FCC Examiner Cooper was surprised one morning last winter during the dull technical hearings when an expert witness for the Bell system announced that the Ohio Bell Tele-

Inventive Genius Brings New Problems

"RECORDING devices are only one of the headaches of the telephone companies. Among others are the Hush-A-Phone, electronic secretaries, and a host of gadgets which are continually being patented. Over the years, hundreds of devices have been developed for use in connection with the telephone—more than 200 since the advent of the hand-set alone."

phone Company would soon install 200 telephone answering devices for its own subscribers. In other words, the Bell companies had decided that there *was* some public demand. And such being the case, the telephone company was undertaking to supply that demand. Presumably, the Ohio Bell installations were simply the beginning of a general pattern for the entire Bell system. The independent telephone companies, operating chiefly in small towns and rural communities, still fail to find any special need for changing their service policy—although a few of the larger independents were said to be different.

The Bell companies had apparently tested the telephone answering device field pretty carefully. It is significant that they selected as their choice an independently manufactured device known as the Peatro-phone. Bell experts found that the Peatro-phone performed mechanically much better than four rival devices. It had special features enabling the subscriber to leave messages (known as the "play-out" message) for parties who might call in his absence, as well as record messages made by incoming calls.[1]

To give a concrete example, Dr. X, leaving his office at 10 AM, could register a veritable timetable of places where he might be reached during the day for emergency calls. Any subscriber calling Dr. X would hear this message automatically and could then leave his own message, if he desired. Upon returning to his office in the late afternoon, Dr. X could quickly play the complete collection of *incoming* messages, thereby enabling him to set up his own appointments, or otherwise arrange his future plans in the light of such information.

[1] While both FCC and Bell expert testimony as to the selection of this instrument was based solely on the merits of its performance, it is an interesting fact that the manufacturer of this product has always maintained a sales policy of dealing only with telephone companies. It does not sell its product to the public at large.

Because the telephone company would render this service, it would be on a monthly service charge basis ($13 a month was one figure mentioned during the hearing). Needless to say, this announcement caused quite a reaction among the sponsors of rival devices selling to the public at prices ranging around $500 for similar operations. A telephone subscriber using the utility's service would not be committed to a large capital outlay. Furthermore, he would have no responsibility for installation, maintenance, or service conditioning. He would look only to the telephone company for service as an end product.

Electronic Secretary

THE appeal of a recording device to answer telephone calls is illustrated in a circular of the Electronic Secretary Industries, Milwaukee, Wisconsin, which has developed an automatic, portable, telephone answering machine. The device is intended for such groups as doctors and dentists, manufacturers' representatives, service companies, merchants, hotels, industrial plants, utilities, homes, small businesses, architects and engineers, contractors and others.

When the electronic secretary is put on duty and the phone rings, the telephone handset will be raised about three-eighths of an inch, a prepared answering message will be sent out to the party calling, his message will in turn be taken down, and, after an interval, the receiver will be replaced on the cradle.

According to the circular, the device not only answers the telephone when you are not there, but while you are busy with something else, and it will hold the line until you are free. It "unerringly records name, number, and message of person calling; accepts orders, appointments, and other information. It also transfers calls to other numbers where you may be reached." It is not connected by wire to the telephone in any way.

An example of how the device would work is given in the circular. Thus: ELECTRONIC SECRETARY: "Good afternoon, this is the recorded voice of the Electronic Secretary answering at Mr. Doe's office. Mr. Doe is not in at the present time. Kindly leave your name, number, and message and I will record it for him. You have fifteen seconds to speak. Please begin."

Then, after the fifteen seconds have elapsed: ELECTRONIC SECRETARY: "Your time is up, if you need more time call this number again, thank you." (Hangs up.)

Call-waiting Indicator

THE FCC turned down a request for a hearing on a call-waiting indicator device, but a petition for reinvestigation has been filed. The purpose of the device is to indicate, by means of a light which comes on while a telephone instrument is in use, that someone else is waiting to talk from the outside.

Gadgets Numerous

THE Pad-O-Phone, a pad and pencil set which snaps onto the oval telephone base, is being sold at about $2.50 retail. . . . Another gadget is called the Handy Dial Pencil. It consists of a metal pencil and a magnetized small plate which is attached to

the base of a phone instrument. When the pencil is not in use, the magnetized plate holds it. . . . Receiver holders of rubber are quite common attachments. These are designed to fit over the shoulder and hold the receiver to the ear without the use of one's hands. In addition to simple rubber or leather holders, more elaborate ones using hook-shaped metal pieces fitting over the shoulder are on the market. . . . Plastic telephone covers of various colors sell at retail for about $2.50. They fit over the receiver as well as the base of the telephone instrument and appeal to those who want their telephone instruments to harmonize with the room furnishings or for other reasons.

Some Cabinet officers in Washington have used white telephones to indicate the instrument connected directly with the White House. The telephone companies find that imperfectly fitted plastic covers sometimes give trouble, holding the receiver off the cradle. For a service charge, subscribers may obtain telephone instruments in various colors directly from the telephone companies.

Still another telephone adjunct on sale in the stores is a circular snap-on disk showing frequently called or emergency telephone numbers. It is claimed not to interfere with the use of the dial.

The "Lunatic" Fringe

IN the Patent Office in Washington a suite of offices is required to house the indexes to telephony patents, the number of which by now runs into the thousands. A good many of these are in the nature of gadgets and novelties. Some are outright "Goldbergs" —a trade name for a patent so complicated or absurd as to be comic paper material. Naturally, most of them are not in commercial production.

There are, for example, a great many patents of ideas for holding the receiver on one's shoulder; or, in some cases, holding it steady on the desk, so that the listener who places his ear next to the ear piece will have his hands free. Another group of patents offers illumination of the figures on the dial of the telephone instrument. One patent would provide sterilization of the mouthpiece by the use of ultraviolet light.

Another offers the same result by means of a chemical container attached to the mouthpiece and through which one talks. There are numerous patents for recording sound on film, wire, tape, and discs. Automatic reception and transmission of telephone messages form another category in which many patents fall.

Then, there are the patented devices for amplifying an incoming telephone message, so that it may be heard by

¶ "ON *the whole, it would appear that there has been a sound basis over the years for the* [*telephone*] *industry's historical 'no attachment rule.' Good service and safety have been the objectives of the industry. If the subscriber were permitted to own or install his own equipment, the service responsibility would be divided.*"

the hard of hearing, or by a group of persons in conference or assembly. Another patented gadget is a 3-minute hourglass which may be attached to the telephone instrument and helps hold down long-distance bills. From 800 to 900 telephony patents are now pending at the Patent Office.

On the whole, it would appear that there has been a sound basis over the years for the industry's historical "no attachment rule." Good service and safety have been the objectives of the industry. If the subscriber were permitted to own or install his own equipment, the service responsibility would be divided. There would be a field day for cheap substandard equipment and gadgets which might not only wreck the service but even burn down the customers' premises, and result in damage suits against the telephone or electric company (especially if the subscriber were allowed to scramble a 110-volt electric service with telephone service simply to get a light or electric signal, etc.). Years ago, at the turn of the century, farmers could buy their own telephones from mail-order houses and start their own mutual service.

The result of that experiment speaks for itself.

And so, while it is quite possible for Junior to rig up a telephone that will work with a couple of dollars' worth of wire and other materials he can buy in a hardware store, it's a wise parent who would keep his experiments confined to the barn or the basement. Letting such "foreign attachments" be tapped into the regular telephone circuits is an easy way to foul up your own service and become exceedingly unpopular with your neighbors, because it could foul up theirs just as well.

"THOSE misnamed 'liberals' who look to the national welfare state to set mankind free from all the worries and hardships of self-support are strangely blind to the universal truth that concentrated power is the perpetual enemy of human society and that diffusion of power among the many is essential to human progress as well as to individual liberty.

"The question really worthy of our thought is: Must this concentration of compulsory power continue year after year, until in the end we accept national Socialism? Must we permit this evil superstition that almighty government is Almighty God, to drag our society down and down through another Dark Ages, until in some remote decade faith in liberty comes again to lift mankind out of the degradation into which excessive government has driven one nation after another whose histories we always read but whose lessons we never learn?"

—DONALD R. RICHBERG,
Attorney.

The Hidden Gold in Municipal Utilities

A thought-provoking discussion of economic prerogatives which municipal plants enjoy because of their exemption from regulation, taxation, and other controls. With tongue in cheek, the author points the way to new riches for municipal treasuries if they want to go all the way in taking full advantage of legal license.

By J. CARL POINDEXTER*

It is a well-publicized fact that most municipalities are hard put to meet their growing government responsibilities and costs. Their financial difficulties stem, in large measure, from legal limitations on their taxing authority and power. These legal limitations, it is pleaded, discriminate against municipalities and restrict the tax resources available to them. So, municipalities are forced to look around for sources of revenue.

During the past several months, I have been diligently exploring the economic and legal merits of the existing practices and the extent of the possibilities of using municipally owned utilities, as devices for raising the revenue needed by municipalities to meet their increasing costs of local government. My investigations have led to the discovery of some remarkable facts, principles, and conclusions which, I am sure, will be of practical interest to the hard-pressed officials of virtually every municipality (1) in the commonwealth of Virginia and (2) the officials of hundreds of other municipalities in numerous other states throughout the country. Indeed, as a result of these investigations, I am able to and will prove in this essay that, for hundreds of municipalities in a dozen or more states, there will be no lack of needed revenue provided the authorities of the said municipalities can be persuaded merely to take advantage of the revenue-raising opportunities now legally available to them.

Inasmuch as they have more or less exact parallels in many other states, I shall take, as my point of departure, the laws, practices, and possibilities (in respect to municipal utilities)

*For personal note, see "Pages with the Editors."

which obtain in Virginia — the "mother" of states, as well as presidents, etc. But, lest too many learn too much too cheaply, I shall leave it to the reader to ascertain the extent that the laws, practices, and possibilities herein set forth (in respect to municipal utility enterprises in Virginia) apply in relation to his own state.

VIRGINIA laws contain the following provision: (1) Municipalities are empowered to acquire, or construct, and operate any or all of the various utility enterprises with which we are familiar. (2) This authority includes the right of municipalities to acquire or construct and operate utility enterprises or facilities outside of their corporate limits. (3) Unlike the provisions of law applicable to privately owned utilities and their customers, municipal utilities are exempted from all taxes and from all restrictive regulation of their utility rates applying to customers residing inside or outside of their corporate limits.

It seems that only a few, if any, of our municipal fathers, or their legal advisers, have fully realized the implications of these exceptional powers. Anyway, it can be said that none of them has taken full advantage of the rich revenue-raising opportunities which these preferential provisions of law afford. In the interest of fairness, however, the fact should be noted, before we go any further, that more than a score of Virginia municipalities (Danville, Martinsville, Bedford, and Salem, for example) have taken partial advantage of the legally available opportunities for raising large sums of net revenue for financing their governmental activities through the operation of municipal utility enterprises. Because the typical facts of the situation obtaining in and around the towns of Salem and Bedford, Virginia, probably best epitomize the remarkable state of affairs, principles, and possibilities which I have discovered exist in Virginia and, in varying degrees, in many other states, I shall, for purposes of exposition and by way of illustration, use these facts in the discussion which follows.

What Goes on Here?

IT is well known that the towns of Bedford and Salem raise the most of their local government revenue through the operation of their electric utilities. These tax-exempt, semiautomatic, monopolistic, electric tax-gathering contrivances work better at night than in the daytime. In the town of Salem the contrivance referred to is called an electric distribution system; and it is well named in view of the fact that it buys electricity from the Appalachian Electric Power Company, in bulk and at a wholesale price of less than one cent per kilowatt hour, and resells it at an average price of about 3½ cents per kilowatt hour. The outstanding feature of Salem's electric distribution system is that it does business beyond the town's corporate limits and gathers a goodly amount of revenue for the town from some two thousand nonresident suburbanites—through copper wires, so to speak.

The *annual net revenue obtained* by the town of Salem from operation of its electric tax-gathering facilities has, for years, been of the order of *100 per cent,* more or less, on the town's net investment in said facilities. This extraordinary profit is used and usable

solely for the benefit of the town and its inhabitants. More significant is the fact that, while contributing pro rata to the exceptional profits accruing to the town, nonresident electric customers do not receive pro rata return benefits. Moreover, these suburban electric consumers have no voice whatsoever in determining what electric charges they shall have to pay, nor what use shall be made of any profits or proceeds from such sales. On top of all this, the state laws and court interpretations thereof are such as to guarantee to the town, or any other municipality, these remarkable privileges and immunities. Once a municipality succeeds in extending its utility facilities and services to suburban customers, suburban customers are automatically barred by law from contesting any rate the municipality sees fit to charge.

MOST municipalities, of course, extend their utility services to suburban areas only upon request. The same thing is true of the services which privately owned utility companies supply to citizens elsewhere in a state. But, unlike the protection provided by law to customers of privately owned utility companies, suburban customers of municipal utilities are denied the right to turn to the state corporation commission for protection against unreasonably profitable utility rates exacted of them by their neighboring municipality. They may not invoke the power of the state corporation commission to compel rendition of town service nor the correction of such service, if rendered. They may not ask the commission for alternative service by a privately owned, tax-paying, commission-regulated utility company if they are dissatisfied with the service they get from the town. Thus the law authorizes the establishment of and secures monopolistic privileges for municipal utility businesses not only within but without corporate limits, as well.

Are Town Utility Rates Taxes?

THE thoughtful reader may jump to the conclusion that, for all practical purposes, this state of affairs involves "taxation without representation," over which issue, and largely under the leadership of Virginia patriots, we fought the Revolutionary War; that these provisions of state law are contrary to the United States Constitution which says that no person shall be deprived of "the equal protection of the laws" or "of property without due process of law"; and that it is, therefore, unthinkable that Virginia law allows a municipality to

¶ "IT *is a well-publicized fact that most municipalities are hard put to meet their growing government responsibilities and costs. Their financial difficulties stem, in large measure, from legal limitations on their taxing authority and power. These legal limitations, it is pleaded, discriminate against municipalities and restrict the tax resources available to them. So, municipalities are forced to look around for sources of revenue.*"

practice this sort of thing on its suburban nonresidents. But this is an entirely mistaken conclusion. Of course, from the common sense point of view, it may feel like a tax, cost like a tax, and otherwise seem like a tax—the law makes a well-settled distinction. Just as in the case of the fees paid for automobile tags, or for the use of public golf links, or swimming pools, etc., the law says the money paid is in the nature of compensation for services rendered rather than a tax, *per se*. It seems that where a public body operates in a proprietary capacity, it is entitled to payment for its benefits just like the operator of a similar private business. And this, says the law, is a rate, not a tax. The beauty of it is that the law takes the same liberal view of this so-called "rate," no matter how much it might cost the consumer, in proportion to the cost of the service. No questions can be asked. No controls can be invoked. The town fathers need account to nobody, except perhaps their own electors periodically. A more clever method for extracting hidden, if not painless, taxes would be hard to imagine.

FURTHERMORE, the relationship between the municipality and its suburban utility customers is purely a matter of contract. Neither the municipality nor its suburban utility customers have any legal responsibilities or rights toward one another except such as are based upon contract. The municipality offers its utility service to the suburban customer on its own terms, and the customer takes it or leaves it. The fact that the municipality is legally secure in its monopoly of an admittedly essential utility service makes no difference. The fact that, in such a lopsided situation, suburbanites have no bargaining power by contract is immaterial. The fact that just such one-sided situations moved the courts long ago to work out the concept of a "public utility," and its subjection to regulatory control is beside the point.

OF course, some literal minded suburbanites might be so unimaginative, if not downright sore enough, to take a somewhat selfish view of the situation. If the citizens of a municipality pay more for a municipally supplied utility than the cost of supplying it, it might be commonly thought and said that the municipality has made a profit. But this is an incorrect view of the matter. In the case of a monopolistic municipal utility enterprise, it makes no more sense to call its excess of revenues over expenses a profit, than it does to call the excess of municipal tax receipts over expenditures a profit. Here is the reason:

In a democratically governed municipality, the people are the government and the government is the people. It follows that, if the municipality (government) collects more than it pays out, in supplying utilities to its citizens, the citizens have made a profit on themselves! But this, obviously, cannot be! To the extent that the government collects more for the utility services which it supplies to its citizens than it costs to supply such services, we have what comes suspiciously close to taxing its citizens—but the courts have said otherwise. Anyway, it is well settled that the courts reject the practical economic suggestion that a municipality which collects more from its utility customers than the full cost of supply-

Suburban Service by Municipal Plants

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ing the utilities *is collecting taxes from them,* in the amount of the excess.

STRICTLY speaking, this does not altogether apply to the "profit" made by a municipality on the business of supplying utilities to *nonresidents,* since they are not participating members of the municipal government. In this case, the municipality and its citizens can and do certainly seem to make some sort of profit on the monopolistic service to nonresidents. In other words, the municipality is engaged in a *private* business, outside of its corporate limits. Its stockholders are the citizens within the town. Like the stockholders of a privately owned public utility, these citizens of the town are the beneficiaries of the profits from the business.

It is contrary to the Constitution of Virginia for a municipality to engage in any private business. Yet many of our municipalities seem to be engaged in a quite lucrative suburban utility business. Fortunately for them, the courts have had no difficulty in finding ways for legal rationalization of such practice. They hold that, so long as the business is "incidental" to the discharge of the municipality's responsibility to provide utilities to its own inhabitants, "a public use" is involved and, therefore, the municipality is not engaging in a private business.

"No-tax" Towns Merely a Matter of "Adjustment"

WHETHER socializing our utility enterprises is wise or otherwise, it would seem to be a perversion of the socialistic ideal for a governmental authority to operate any "public utility" enterprise with the deliberate object of making an extraordinary "profit," even though the proceeds are used to finance regular government activities and expenses. At the Federal government level, it is the taxpayer

who supports the publicly operated service, rather than vice versa. Yet, admittedly, municipalities, which operate utilities for the purpose of raising the revenue to finance local government, often maintain rates which still compare favorably with those of private utilities—realizing, at the same time, "profit" many times that accruing to comparable privately owned enterprises. Here's how:

(1) Municipalities pay none of the Federal, state, and local taxes applicable to privately owned utilities. (2) Municipalities generally occupy a legal position which enables them to require —as they quite generally do—that the utility customers, inside or outside of town, defray the cost of and convey to the town the utility facilities through which they extend service to their customers. (3) Municipalities are at liberty to choose the territory in which they will serve. They can confine themselves to those territories that afford the most profit (horrid word, but we look in vain for a more discreet synonym, law or no law). Privately owned utilities can, and are, compelled to spread their services far and wide, and over lean rural territory, which dilutes their better average revenue from built-up, thickly settled areas. (4) Municipalities are, in the nature of the circumstances, able to escape or obscure the higher costs and certain administrative and managerial expenses privately owned utility enterprises in the same field must obtain and pay for without question.

BECAUSE of the fact that such towns as Bedford and Salem were astute and resourceful enough to take advantage of these legitimate opportunities over the years, their financial position has become superb. They both enjoy the enviable advantage of being largely free of the curse of imposing "taxes" (as such). Actually, until a few years ago, Bedford advertised itself as a "no-tax" town. True, the town backslid and lost this quaint distinction by imposing some sort of infernal tax. (I have been told that it was in the nature of a toilet water tax.) But it gives an idea of the possibilities.

Salem still has a small property tax. Even though it is comparatively small in amount, it goes without saying that the necessity of paying any such direct tax at all must be considered as an unmitigated nuisance by the local citizenry.

FOR that matter, almost every property owner knows that taxes on property ought to be entirely eliminated, if it is possible to transfer the burden to something else—something less visible, like electricity. This may throw the cost of local government onto electricity users, a majority of whom, while using approximately their per capita share of electricity, own little property. But it does have the advantage of largely exempting from taxes an important minority who own the larger portion of the property in the community.

The amount of revenue obtainable by a municipality, through its ownership and operation of almost any utility, is highly flexible and capable of easy manipulation. For example, it is within the realm of both legal and economic possibility for a municipality to impose high water rates to bring in all of the revenue required to meet

its general governmental expenses—as well as the cost of the service. The little town of Vinton, Virginia, largely does this. It is easier to do with an electric utility.

Taxation without Representation Has Its Advantages

As is well known, wherever there are a large number of suburbanites residing around the fringes of a municipality, there is a tendency for the city fathers to look with favor upon eventual annexation of such suburbanites. This is a mistake. The town of Salem would be rather foolish to annex some two thousand suburbanites whose electric and water utility services are supplied by the town. Suppose, instead, the town should raise by 75 per cent, or 100 per cent, if necessary, its present electric and water rates applying to its suburban utility customers. As a result, it could gather from these suburbanites sufficient additional revenue to permit the total elimination of property taxes within the town. Over the span of a few years, all town indebtedness could be retired and other desirable things accomplished.

Large cities have interesting possibilities here. How often have we heard the old "blight of cities" argument to support politically and legally difficult annexation! How often have city fathers complained of the well-to-do citizen moving out to fashionable suburbs to avoid city taxation, but continuing to do his business in the city and otherwise using city advantages, while the city's downtown slums and relief list grow, and property values decline!

Here's a way to get back at them. It's all perfectly legal. The only practical difficulty might be if a private utility service happens to get out to the suburbs first.

MAINLY and avowedly for the purpose of financing an expensive new water plant, Salem recently raised water rates by about 60 per cent. Notwithstanding the fact that suburbanites, who obtain water from one or the other of the town's two water systems, have been compelled for years to pay 25-50 per cent more, for water, than town residents, the 60 per cent increase was made to apply to them, too. The rub is that most of these suburbanites are not served from the fine new system. They are served by a sixty-year-old, town-owned, spring-supplied, gravity-flow, cheaply operated, and already highly profitable outside water system.

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How to Create a "No-tax" Town

THE governing bodies (councils) of our other municipalities can take action along the following lines: (1) Negotiate, if possible, the purchase of all privately owned utility plants and facilities situated within their corporate limits. Failing this, they might lawfully suspend the privilege accorded to such utility companies of using the towns' streets and all other indispensable easements in the conduct of their private utility business. Even where there are franchise complications, there are other ways of harassing the utility companies. In most cases, municipalities can undertake the construction of their own utility facilities. This is likely to bring the private utility to terms. Facing a disastrous loss, it may be glad to sell out for a fraction of the value of its property. (2) Likewise, the municipalities might negotiate the purchase from their owners of all of the utility facilities used in supplying utility services to *out-of-bounds* (suburbanite) residents. This, as we have seen, is most important—the velvet fringe, so to speak.

In all such matters, existing law gives our municipalities the upper hand. The purchase price can quickly be recovered or easily amortized. This is obvious from the experience of Bedford and Salem. The latter town, for example, realized during the fiscal year 1946-47 a net "profit" (hidden tax income) of 125 per cent on the net investment in its electric tax-gathering contrivance—an appreciable part of it from out-of-town customers.

Our larger and more successful private utility companies have to pay 20 or 25 cents in taxes out of every dollar they make out of their customers. While some of this money goes to our state, city, town, and county governments, the larger part of it is hauled off to Washington. Now, why send all that money to a lot of strangers, when it can just as well be kept at home? The whole amount of such tax money now being extracted from urban and suburban utility customers, through the agency of our private utility companies, can be confined to our municipalities.

MOREOVER, by virtue of the fact that municipal utilities are entirely tax-exempt, our municipalities, you see, would start with the assurance of being able to realize (even from the present level of utility rates) an amount of "profit" equal to the amount of taxes now being paid by privately owned utilities to the Federal, state, and county governments. Of course, Congress would miss these tax receipts the next time it got around to passing a new tax bill, and would probably have to look around for other ways to get the tax money out of us. But at least the town, as a town, would enjoy the advantages, no matter what it does to the income or other tax bills of the citizens at large.

Some purists, of course, may raise moral questions about one government imposing taxes on the unrepresented and virtually benefitless citizens of another neighboring government or area. But, in case you are thinking that suburban citizens would protest and insist on wrecking this happy arrangement, such a result has not happened. For many years, suburban denizens have been forced to pay, and

Tax Avoidance via Utility Service

". . . instead of BILLING *consumers for utility services provided them, the municipality should* TAX *them in whatever amounts it is desired to extract from them in relation to the amounts of utilities which they consume. Taxes, we must remember, are deductible for income tax purposes. Bills for services rendered are not. So we merely switch the labels and—presto—tax relief for the town's citizens."*

have graciously acquiesced in the burden of paying disparate and unduly profitable utility rates (hidden taxes) imposed by their neighboring municipalities.

Even if they should be inclined to object, about the only means by which suburbanites could possibly alter the situation is through recourse to the court with a petition asking it to order the neighboring municipality to annex them. Success in such an undertaking would, of course, put them within the corporate limits of the municipality and thereby afford them an opportunity to help vote out councilmen responsible for their wretched mistreatment. Experience proves, however, that suburbanites regularly take an uncompromising stand *against* annexation. Their aversion to annexation is something akin to the Devil's aversion to holy water. Those few suburbanites who are bold enough as to take a stand in favor of annexation have been known to invite the serious and unwanted consequences, alienating friends and neighbors, and even prejudicing business interests.

It would appear, therefore, that the suggested utility machinery for tapping the pocketbook of the suburban tax slacker would eliminate the existing grounds and occasions of our recurring annexation suits and, perhaps, put an end to the expensive legal wrangling and its accompanying strained political relationships.

A Palatable Tax Reform

A FACETIOUS example of an indirect tax is the dog tax. The dog doesn't have to pay it. The taxes with which we are here concerned are in-

direct or hidden to the extent that the people who do not pay them as taxes pay them as something else—rates for services performed. This disposes of a lot of resistance which might be encountered if the tax were open and clearly defined as a tax obligation. Hence, the citizens of Bedford and Salem, and the suburban spots thereabouts, take their tax medicine without a questioning thought or objection, and dutifully pay their taxes to these towns through their utility bills.

Indeed, the denizens of Bedford and Salem almost unanimously affirm their unshakable faith in this method of taxing not alone suburbanites but themselves, as well. It is almost as if paying taxes in this manner were a pleasurable experience. This faith in an electrified tax system, so to speak, is embraced by even the arch-conservative, antisocialistic, anti-New Deal businessmen who have experienced the electric charges in question. So, there is scant reason to doubt that other towns could develop similar support for the adoption of such a municipal tax reform, despite the fact that unnecessarily high electric, gas, water, and other municipal utility bills would deny them the potential advantage of lower business operating costs.

THE reasons why businessmen might be expected to go along are threefold: (1) The taxes collected would be hidden—in fact, they might even be referred to by that pleasant term "profits" in lieu of that disagreeable word, "taxes." (2) They would be paid in convenient monthly instalments. (3) A pleasant illusion of gain would be created through the exemption of businessmen from the plagued direct property and business taxes now being imposed.

We might also have here the answer to that pesky nuisance, the local sales tax. Our towns would not need it. Their secret municipal tax weapon could fully serve as the force by which they could maintain the correct balance between the tax benefits and burdens appertaining to themselves, as against their presently favored country cousins.

Reversing the Process for Tax Reduction

UNDER the prevailing procedure used to raise hidden tax revenues from the operation of municipal utilities, Federal or state income tax law permits no part of a customer's rendered utility bills—not even the element of tax implicit therein—to be deducted by him for income tax purposes.

Now, it is even possible, by reversing the approach already discussed, to make deductible at least this tax element. Such taxes might be viewed as an unfair, unnecessary, and avoidable burden on our municipal utility taxpayers. It might even be possible to arrange for virtually *the whole amount of the cost or price of municipally supplied utilities,* used by municipal residents, to be made deductible from their taxable individual incomes! What a pleasure—getting a "free ride" for your utility service in the form of tax deductions. Wouldn't it be wonderful if we could charge off other living expenses as luxuries in this manner.

How can this be done? A municipality can furnish not only water and electricity but all utilities—or anything

else—*free* to its residents. Of course the cost of such services must be recovered from some source. But the necessary revenue to defray the cost of providing any and all utility services could be raised by the familiar method of levying property taxes on each municipal utility user's real or personal property, or by the less familiar method of imposing a special excise tax on every utility user's bills. But, probably the best method of raising the needed revenue, at least to start with, would be for the municipality to reduce its utility rates to, say, a mere 10 per cent of the existing rates and, at the same time, impose an excise tax of, say, one dollar on every dime in the utility bills thus arrived at and rendered to its customers. Anyway, the amount of such taxes could readily be adjusted on the basis of the amount of service which meter readers show that individual residents have used.

In other words, instead of *billing* consumers for utility services provided them, the municipality should *tax* them in whatever amounts it is desired to extract from them in relation to the amounts of utilities which they consume. Taxes, we must remember, are deductible for income tax purposes. Bills for services rendered are not. So we merely switch the labels and —presto—tax relief for the town's citizens.

LEST the reader be skeptical about the legal basis for such a tax-avoidance device, consider the fact that it is already being practiced to some extent. For example, the city of Charlottesville, Virginia (which owns and operates its local gas utility and, therefore, fixes the rates applicable to its customers, both within and without its corporate limits), imposes a tax of 5 per cent on the amount of the gas bill which it assesses, in the first instance, against everyone of its customers. There are other municipalities, not only in Virginia but elsewhere, which follow the same practice.

These excise taxes on utility bills are, of course, deductible for Federal and state income tax purposes.

Although it is legally impossible under the present simple method of using town utilities as devices for extracting *taxes* (or, let us say, revenues in lieu of taxes) from citizens, the advantage of the proposed pleasant device lies in the fact that it might even permit a municipality to furnish services other than electricity and water. Radio, milk, housing, medical care, communications, transportation, etc. —possibly even such quasi public utility things as laundry, cleaning and pressing, and lawn mowing services— are all possibilities. Legalizing the deduction of the total cost to or price charged against the community for

¶ "ALTHOUGH *it is legally impossible under the present simple method of using town utilities as devices for extracting* TAXES *(or, let us say, revenues in lieu of taxes) from citizens, the advantage of the proposed pleasant device lies in the fact that it might even permit a municipality to furnish services other than electricity and water.*"

such services *from the taxable incomes of its individual residents* should certainly strike a popular chord. *Theoretically, sufficient deductions might accrue to local taxpayers to relieve them of the legal obligation to pay any income taxes!* Moreover, since one effect of tax exemption is to lower the costs of production, town residents would, indirectly in the form of lower utility production costs, receive the benefit of the town's exemption from all Federal, state, and county property, franchise, and income taxes now being paid and shifted to their customers by privately owned utilities whose services, it is here contemplated, would be replaced by town-supplied services.

The Question of Law and Consequences

LAWYERS can cite court precedents, even decisions of the U. S. Supreme Court, which have put the stamp of legal approval on the use of the above-suggested indirect basis of determining the amount of taxes to which a citizen may be subjected. (See *e. g.*, Flint *v.* Stone & Tracy, 220 US 107, in which the Supreme Court, in ruling on a case analogous to the arrangements here being outlined, validated the distinction between the *subject* and the *measure* of a tax!) However, in the event that the courts insisted on looking beyond the form at the substance, and finding illicit tax evasion implicit in the practice of our ingenious scheme, it would amount to a veritable revolution in the principle by which the courts have heretofore been guided in analogous cases. That is to say, if the courts held that our scheme, under which municipalities would furnish utilities at rates amounting to only a trivial part of the cost of the utilities and make up the difference by imposing deductible *taxes* on our utility bills—if the courts held that this involves illicit and inadmissible tax evasion, they would, in order to be consistent, have to hold also that the existing municipal practice of charging *prices* for utilities which *exceed* the cost thereof likewise implicitly involves the reverse; *i.e.*, the imposition of taxes, in the amount of such excess, on both resident and nonresident utility customers.

BECAUSE it is recognized by the courts everywhere that it is illegal for a municipality to "tax" nonresidents, we would have to continue the present practice of hiding the tax element in the utility revenues mulcted by our municipalities from their nonresident customers.

But, whatever the reasoning by which the courts might outlaw our proposed tax avoidance scheme, it would thereby inescapably set the stage for completely upsetting the widespread anomalous tax relationships now existing between municipalities and their resident and nonresident utility customers.

If the courts should, nevertheless, attempt to strike down our setup, the basis of such an adverse ruling would, by inescapable collateral logic, inevitably produce a rash of litigation involving the unscrambling of the already scrambled omelet of established intergovernmental hidden tax relationships. The result would likely be a far-reaching and disastrous disruption of the vested fiscal interest of the innumerable governmental units throughout the country.

The Law Helps Those Who Help Themselves

As already noted, vast sums in income taxes and indirect taxes now being handed over to the Federal, state, and county tax collectors could be saved for the residents of municipalities if their officials and shysters would put their heads to work. Also a few adoptions of this tax-dodging scheme would be sufficient to give all of the encouragement needed to bring about the widespread development of municipal socialism; that is, municipal ownership and operation of electric, gas, transportation, housing, and other utility enterprises.

Then, of course, we would have to reckon with the adverse effect upon the tax collections, and hence the public welfare of the citizens of Federal, state, and county governments. Admittedly, if *every* municipality used such a tax dodge, no net gain could accrue to the citizens of *any* such municipality. The golden geese would, in effect, have killed each other. But such self-defeating consequences are still a long way off. Meanwhile, the citizens of such of our municipalities as are taxwise and alert to their opportunities will enjoy the enviable advantage of getting outsiders to pay their taxes for them.

It is true also that this proposal contemplates a somewhat unscrupulous—some might even say immoral—exploitation by one municipality and its citizens, of all other governmental divisions and their citizens. Their taxes would have to be correspondingly increased to make up for the shrunken tax collections forthcoming from within the tax-exempt municipalities. But the program has at least the respectability of long establishment, as evidenced in Danville, Bedford, and Salem. The only essential difference between the effect of this tax reform and the effect of the present ownership and operation of tax-exempt electric utility systems by such towns as we have mentioned is merely one of degree. Indeed, when it comes to such complicated, intellectually once-removed, issues of general social or economic justice, it is rare that even preachers are able to see or feel any need to be morally concerned. The same, as a matter of course, is true of legislators and courts. Why, therefore, should ordinary citizens be worried about who pays the bills?

Since a number of Virginia municipalities are already conspicuously playing this game of "beggar-my-neighbor," by extensively gathering high water and electric "profits" (not really distinguishable from taxes) from their municipally voteless and virtually benefitless suburbanites, and by avoiding taxes that would be accruing to our Federal, state, and county governments, there is an opportunity here for these Virginian pioneers to gain nation-wide attention by taking the leadership in posing as models of something or other. Thousands of hard-pressed municipalities would be glad to learn of this safe and foolproof method of picking the pockets of nonvoting neighbors. With no naive arguments about the golden rule, these suggestions are all passed along by the author gratis and with best wishes for good pickings.

People Will Listen

Developing channels of communication is viewed as the crux of the problem of better industrial relations. How to use the intermediate superior and other original approaches to a better understanding between employer and employee is explored in this readable commentary.

By JOHN E. BOULET*

ANOTHER decade. Again the production and use of electricity have doubled. New techniques, new methods, new products crowd utility management to maintain a safe margin of capacity over demand. We live in an age of speed; we are dedicated to faster production, faster preparation for the uncertain future, faster communications. And in this time of saturation by speed, we in the public utility industry look forward too often, backward not enough.

Yet, we who are trying to develop successful communication between management and employee can find answers to our problems in the dim ages when men lived in caves.

Step into a rocket ship; whoosh backward through time. Let's look at Piltdown or his cousin Neanderthal, if you prefer. He's spending the afternoon scrounging for meat. He will use his club to protect himself. Ahead of him lies the discovery of fire and of rope and of the wheel. He will find, too, that he has a better chance of survival by banding together with his neighbors in the next cave. After he has found that, it will eventually occur to him that he has the attributes to command the group.

Simply, he has a vast, unconscious desire to better himself—the desire for security and a chance to get ahead.

WATCHING him further, we see him in a bear-killing contest, trying to clobber the beast to death faster than anyone else has done it. When he has brought home the week's food, he puts a foot on it and pounds his chest. He grunts his accomplishments to his friends at the barbecue pit. In his spare time he stands within his cave, hammering with rock against its sides, leaving a picture, his mark.

Simply, he has a profound desire to be recognized as an individual, someone important to his community in his own right.

How much has mankind changed?

*For personal note, see "Pages with the Editors."

Studying the burly caveman's antics, we realize that basically our motivations today are much like Piltdown's were quite awhile ago. It is almost a truism to say that man is influenced mightily by his craving for security, his intention to do better than did the preceding generation, his desire to get ahead. It is almost truism, too, to say that a man is motivated by his wish for recognition, his attitude of being an individual, an important individual, in his own right.

As many times as we have heard, and as strongly as we believe, these truisms, we too often ignore them while trying to build employee attitudes. And because we fail to understand and cater to these basic attitudes we fail in our efforts to communicate.

The recognition of these basic drives can be the deciding factor in the success or the failure of any utility program. Two companies, for example, have identical safety programs; their protective equipment, technical processes, safety codes, inspection programs, communications efforts are identical. The safety methods and ideas and plans are freely exchanged. And yet, one of the utilities wins safety awards year after year, while the other cannot even dent its frequency rate. Why?

Careful thought leads to but one conclusion. The difference is in the attitude of employees. It can be found in their mental and emotional makeup.

WHETHER the problem is safety or production or economy or free enterprise, the *receptive attitude* of the employee is vital. He must trust the company's motives, feel that what is good for the company is good for him, know that he is important to the company and that it is trying to give him a square deal. No dollar can buy this attitude. Its development comes only after recognition of each employee's motivating drives. We have seen that two of these drives concern security and recognition.

In his effort to win security and the chance to better himself, the employee has been understood more and more thoroughly since the early 1930's. Industry as a whole has devoted itself to meeting the problem and is solving it.

The public utility industry has an enviable record in its farsighted effort to meet the problem. A recent survey made by the economic research department of the Chamber of Commerce of the United States indicates that while American industry as a whole spends an amount equal to 16 per cent of payroll, the public utility industry pays out 18.8 per cent in addition to wages to provide security, protection, and a happier and fuller life for its employees.

RETIREMENT plans and pensions; collective bargaining and minimum wages; life, accident, and hospitalization insurance; unemployment compensation — these are answers, ever developing, to the problem of employee security. With each additional adjustment, the problem of communicating with the employee—the problem of developing a receptive attitude—lessens. For the employee feels his growing security and consciously or subconsciously cannot help but feel deeply confident about the motives and programs of his company.

Knotted with the employee's search

The Strategic Utility Supervisor

"UNDER present-day conditions the public utility supervisor, whether he be designated as lead man, foreman, superintendent, district manager, or department head, is in the key communications spot. It is through him that orders to do work must flow. He is the contact man when disciplinary measures are necessary. His is the responsibility to know Joe Doakes—his likes and dislikes, his personal problems, his hopes, his ambitions, and his attitudes."

for security is his aim to get ahead. Again, every way in which the utility company helps him to do so spurs the growth of receptiveness. The company program begins before a man is hired. Interviews by trained personnel and testing by proved methods help to place him in the job which he likes and for which he is suited. Next, on-the-job training, the opportunity to apply for openings, and courses designed to increase his skills help him to believe that the company is actively interested in his personal desire to get ahead.

Perhaps the sluggishness in recognizing the need for human relations has come from the fact that they are hard to pin down. Unlike security—money—the necessity for good human relations is not always obvious. This is strange in a society which has succeeded on the premise that the individual is, within limits, supreme. Nevertheless, it is true that a plan for employee security is easier to schedule, see, and administer than is a plan to give the employee those intangibles which will help him to know that he is an important individual to the company.

One factor which can contribute to this "individualism" is the recognition of good work. Too often, supervisors and executives are niggardly with praise for a job because "that is what he is being paid to do." It is well to remember that through the employee's spectacles a well-done job, even if only routine, is better than an average job, for which he still would have been paid.

UTILITY management can also add to its effort to show the employee his importance by more frequently taking active part in the programs designed for him. The participation by

letter, spoken word, and personal appearance of the chief executive can do much toward convincing the employee that "not only does the company mean business in this thing, but it's important enough for the brass to take part." And the employee knows that, in the last analysis, he is the man responsible for the program (safety, for example) which management wants to succeed.

STILL another way to meet the employee's drive for recognition as an individual is to give him a chance in the "give and take" league. Whether it is a suggestion system, a question-answer column in the publication, a discussion meeting, or a mere question asked of his supervisor, this factor is a vital one, because it recognizes the fact that "communicating" is not limited to giving information only but rather includes the interchange or exchange of ideas and opinions. The channel must be a two-way channel which permits flow in both directions.

The company which answers every suggestion, usable or not, with an explanation of management's viewpoint is going to keep the system alive. More important still, it is going to convince the employee that his idea was important enough to warrant serious consideration. The question-answer column which refuses to print answers like "Ask your foreman" and "Space does not permit an answer here" will continue to be the publication's favorite feature. Obviously, the employee who takes time to write a question—usually signing only his initials—feels his question was important enough to be asked "outside of channels." The company that teaches its speakers and discussion leaders to listen as well as to talk and to learn the fine points of drawing questions from the group, is going to profit not only by the discussions, but because the employee, by having his questions sought and answered, is being recognized as an important individual. And, finally, the company which demands that its foremen encourage and answer, or get answers to employees' questions, is going to profit in the same manner.

UNDER present-day conditions the public utility supervisor, whether he be designated as lead man, foreman, superintendent, district manager, or department head, is in the key communications spot. It is through him that orders to do work must flow. He is the contact man when disciplinary measures are necessary. His is the responsibility to know Joe Doakes—his likes and dislikes, his personal problems, his hopes, his ambitions, and his attitudes. His relationship with his men is an everyday matter not being dependent upon special meetings or special letters or bulletins. And most important here is a channel through which employees indicate a willingness and desire to receive information. Recent opinion surveys have shown that 75 per cent of all employees have confidence in the honesty and integrity of their immediate boss. Here indeed is a receptive attitude.

Amazing, however, is the fact that despite his enviable position for effective communication, the immediate boss is seldom trained on what to communicate or how to communicate. The well-meaning foreman who realizes the need for teamwork in a power plant, for example, can stress that

teamwork so much that he discourages ideas from the individual worker which could be valuable, both in operations and in employee recognition. The foreman who is an "old-timer" —the one who remembers using baling wire to keep the company's oldest turbine on the line—is in a position to do a superb job of selling job pride and company loyalty to his men. But too often he finds himself without the knowledge, without the tools, without the incentive to communicate.

In conclusion, a receptive attitude can be developed in employees by the actual mechanics of communication. No company would ask the gardener to do the work of an engineer. But many companies persist in having stenographers, for instance, edit the employee publication. Workers recognize, at least subconsciously, a publication which is unfinished, unprofessional.

If management thinks no more of it than that, why should the employee? The same is true of bulletin boards loaded with ancient notices; posters which are poorly contrived; meetings which are hit and miss, with no semblance of organization or planning. The mechanics of communication affect its reception. If they are worth using, they should be used well for full effect.

And now the miracle occurs, and it is certainly equal to the miracle of harnessed electricity. The utility which has been striving to build a receptive attitude in its employees, so that it can communicate successfully with them, finds that it is already doing so. It is in the position of the chicken and the egg: while it builds attitude, the company *is* communicating! Communication builds attitude, but so, surely, does attitude build communication.

And that is all to the good. Both are indispensable in an industry like ours, where every employee is a customer and every customer a neighbor. The need for sound, effective communications and understanding is nowhere greater, and the effect on employee and customer relations nowhere more important than here, in this public service business of ours.

Reversing the Fund

". . . some false ideas are gaining ground today in America. The ominous tendency is for governmental powers to find concentration more and more in the hands of officers of government, and to be disappearing at an alarming rate from the hands of of the people. . . . We have taken the foundations out from under our youths, and we are reaping a harvest of casualness and indifference toward the Constitution and Bill of Rights.

"Another thing needed is for loyal-minded American citizens to exert themselves to put our government back into the hands of the people. A long step toward this can be taken simply by dissolving a most substantial part of the Federal bureaucracy."

—Lawrence Mario Giannini,
President, Bank of America.

The Ivory Tower—Huckster Hookup

They are the technical and the sales minds. Utility management has to drive them together—and more and more the twain are meeting.

By JAMES H. COLLINS*

Our heroes are two fellows that we see every day in the utility business, or all business, for that matter, though some more than others.

They are the technical fellow and the sales-minded guy, and we are going to see if we can get a better understanding of what makes them that way. They often stump the man who has to manage them. They frequently clash with each other. They would at times puzzle the crowned heads of Europe.

To get a running start, we will just step back to the days of J. Pierpont Morgan the First, who wanted a special phone setup in his office. The technical men—the technical mind—came and listened as he explained, and immediately got absorbed in the technical details. It talked technicalities, and got Mr. Morgan all wrapped up in them. It looked serious, and went away, and presently made an installation, which the banker said was not his idea at all.

So they had another technical huddle, and there was another installation, all wrong, and finally the technicians told J. P. that what he wanted was a technical impossibility—at that state of the art.

Now, that was more than forty years ago, and utility companies had nothing like public relations men. How well I remember their first effort along that line, when some press-minded executive printed company rules for employees in dealing with the public, about being courteous, the

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customer is always right, never argue no matter how angry the customer.

Imagine! Utility employees being courteous by rules.

Now, even then, a dissatisfied customer the size of J. Pierpont Morgan was something to worry about, so they picked out of a sort of nursery, called "commercial department," a young, bouncy salesman named Tommy. The banker bristled when Tommy came in—another dunderhead from the telephone company? But again he explained his idea, and by this time was talking technical himself.

"Why, the way I get it, Mr. Morgan," said Tommy, "all you want is a phone from here to there, and from there to over yonder. So you can call anybody without leaving your desk?"

"Yes, yes! Can it be done?"

"It certainly can—and right away."

To Tommy, the banker was a human being who wanted something—maybe he knew not what. Like a salesman he said he would get it, don't worry. To the technical men he said, "This is what Mr. Morgan wants; I don't know how you'll do it, but give it to him."

And so it was got, and they all lived happily ever after.

All through the years we have had these two different minds in business, and they have gone on setting up more problems for each other, and for management, and there is no end in sight.

The technical mind is possessed by engineers, chemists, statisticians, comptrollers, analysts, attorneys, economists of various categories. It has gone to "Tech." It deals with things, physical laws and human laws almost as blind. It learns a fearful technical lingo. It does not like people meddling.

The sales mind is personified in the lad who went to college, maybe took journalism, got a newspaper job, learned much about people in the raw on police beats, the city desk, in Washington. Then a utility company hired him to see what could be done about people problems. He speaks the lingo of the man in the street, translates the technicalities to the woman in the kitchen.

But often he has trouble getting things straight from the technicians.

"Then this is something like Aladdin's lamp," he suggests.

"No, it is entirely different—you cannot rub it," protest the technicians.

"Like Little Red Riding Hood—or Jack and his Beanstalk?"

He is trying to simplify the proposition for the populace, as Moses simplified creation, with minimum technicalities, but short and sweet.

"No, it is exactly like itself and nothing else," the technical fellows insist, but what it is like they have not made clear.

While these two characters frequently get into each other's hair, most of the time they work together pretty well toward the same end—which in utility circles is to keep up with the growth of the community, and sell more service by devising more uses. The technical men are absorbed in the engineering, the legal aspects, the research, while the sales-minded fellows are absorbed in simplifying and arousing the desire to have new services.

One deals with things, the other with people, is one explanation.

Or give the technical man a problem; he goes to the literature, while the

sales-minded man goes out to talk to somebody who can tell him.

Maybe if the sales mind could go along to the engineering library, and see what the technical man has to work with, it would add to his respect for that kind of brain—though already he has great respect for the technician, as far as he understands him.

WHEN the technician goes to the library, he steps into a fast-flowing stream of scientific literature pouring from 30,000 periodicals in many languages. It empties into a lake of 100,000,000 past references. The accumulation has become so vast that these cybernetic specialists, with their electronic calculating machines, who are not yet even in the dictionary, are readying a robot which will scan the whole Library of Congress and in minutes give references to all the articles there are on a given problem, working from short abstracts of the articles. On the mail-order plan. The present difficulty is not building such a robot, but who can pay for the abstracting of 30,000 technical periodicals? The government seems to be the answer.

If the technical mind had to compile a booklet for the customers it would go to the library, and maybe finding nothing on that problem, proceed to gather in every customer booklet it could hear about, and from them work out statistical averages of what ought to go into a customer booklet. If it was right on the statistical beam, maybe the customers wouldn't understand it.

While the sales-minded chap would go out and talk with some customers, some appliance dealers, some meter readers, and come up with a booklet right up to yesterday afternoon. The technical-minded fellow would admire its easy tone, and wonder why anybody could ignore so much basic engineering.

In other words, one bakes bread, the other whips up cream puffs, and each is necessary in the utility business—the plodding draft horse and the nervous racer—and most of the time they make a good team, and seldom can their natures be changed, and then by nobody but themselves.

A TECHNICALLY trained youngster lately out of "Tech" got into business for himself with a couple of technical products. He soon discovered that he would have to sell, and he was afraid of people. The first prospective customer he called on sold him something instead. Painfully, by forcing himself into offices, and also by joining several noonday lunch clubs, he got the sales point of view—lunch clubs were excellent for broadening acquaintance, so he could call on men he knew.

By and by he had to have a technical man to run his plant, do research, and

¶ "THE *automobile has wrought a revolution in American life, but is being found a mixed blessing. Nevertheless, car ownership steadily increases—and traffic problems. The automobile appears to be the chief competitor of the transit companies, outdistancing such factors as the 5-day week, and even television.*"

partly through luck, got in as partner a first-rate technician. This specialist worked wonders in research and production.

The ex-technician admired his abilities so much that he thought some of his customers would enjoy him. But that was disastrous. Customers who had been "sold" in the possibilities of that company's products, found the technician intent only on technical difficulties. Taken to talk with him, they were gloomed all over, and had to be sold again.

Again and again, in this cockeyed world, arises the desire to have people otherwise than what they are. If the technical fellow would only learn the sales angle, if the sales mind could only be ballasted with some engineering, some law—what a grand world it could be!

One of the commonest types of books is that which elaborately analyzes what's wrong with the world, and winds up with the same solution —it would be an ideal world if people were otherwise.

That is the solution the utility executive usually winds up with.

But could he possibly change these technical and sales-minded subordinates just a little?

PSYCHOLOGY has some interesting things to say, out of the testing experience of Dr. Doncaster G. Humm, coauthor of the Humm-Wadsworth temperament scale, and Los Angeles personnel specialist. For hiring purposes, psychologists generally start by studying the job, then set up a battery of tests to gauge what it takes. There are the well-known IQ and the aptitude tests, along with interviews and inventories to disclose occupational experience, training, social standing, personal interests, and so on, with the temperament scale exploring, seven basic components of ego, drive, seclusiveness, self-control, depressive tendencies—even criminal leanings.

The tested individual fills out a blank with several hundred questions, and from the answers a competent psychologist builds a profile, showing strong, medium, and weak characteristics. From this profile it is possible to make estimates of fitness for particular kinds of work, which have proved accurate in a high percentage of cases.

Temperament is 80 per cent responsible for success or failure in hiring people, according to Dr. Humm.

What has psychology to say about our heroes?

We are not hiring them; they are already on the payroll. But does a broad hiring experience indicate what makes them the way they are? Is there anything that can be done to help them get along better with each other? Can one or the other change his spots?

Scientific answer just what you would expect—Yes and No.

"THERE is no single type or pattern of temperament to be found among technicians," says Humm, "nor is there a single type to be found among public relations men or salesmen. The most that can be said for the homogenity of these two groups is that certain temperaments (out of a host) are unsuitable in each of these two respective groups.

"Rather, the difference between the technician dealing with things, and the public relations-salesman dealing with people, is the orientation of attitude.

A Word for the Liberal Arts

"THERE is the popular accusation that cold science, detached from the humanities, is largely responsible for the present predicament of the world. True or false, it has set the technician thinking, wondering if more liberal education might not have been a good thing for him—even going back to school for some humanities."

"The technician, because his first concern is with the inanimate, does not find it necessary to develop techniques and procedures which will be effective in dealing with people.

"On the other hand, the public relations-salesman has to give his attention almost exclusively to dealing with people. The consequence is that he develops a number of tricks of the trade unknown to the technician.

"We determine the difference between these two groups principally by a study of the interrelationships between the forces of temperament and the forces of interest. In key jobs we frequently use our newly developed 'qualitative analysis,' which considers thirty-one forces of temperament.[1] When we examine the strengths of these various forces and compare them with the strengths of dominant and deficient interests, we very frequently are able to discover conditions which lead toward compatibility or vice versa."

ILLUSTRATING a dominant interest, Dr. Humm tells the story of a young man, tested for hiring by a large concern, who seemed to have everything, in addition to a strong bias toward the pulpit. There was no other dominant interest in his make-up. Against advice, he was hired, several thousand dollars spent in his training, and for two years he was a good producer. Then he had saved enough money to enter a seminary, and resigned to become a minister.

"But there are some technicians," adds Humm, "who are extremely effective in dealing with things impersonally, who nevertheless can switch their orientation of attention and become just as facile in the social field. Such individuals are frequently found among scientists who make money at

[1] Typical subcomponents rated from very strong to very weak: egoism, defense of ideas, suspicion, seclusiveness, sensitivity to social impacts, cheerfulness, tendency to be active, low opinion of others, social adaptability, stabilizing tendencies, etc.

applying their science in the industrial field. Examples of this are engineers who go into consulting work, chemists who set up laboratories and manufacturing plants of their own, and so on."

This, in a utility organization, would amount to placing each fellow in the other's department for a while, to infect the technician with the public relations viewpoint, and the sales mind with some engineering, science, legalities. If there is no "take," you probably have a better technician, and understand that he wants to work in the technicalities. As for the other type, he will probably pick up superficial technical knowledge and translate it into Mother Goose for the customers.

Who started the utilities?

The scientist, inventor, engineer, financier, attorney—the technicians.

And for long, ran them comfortably on growing demand for utility services, ample profit margins, freedom from public regulation and public opinion.

Where did the sales mind come in?

WHEN competition, regulation, and customer problems began to accumulate, nearly fifty years ago, the technicians were not able to deal with these things. Management brought in the salesman, on trial—a strange bird, who had strange ways of working.

The first set of rules for employees, enjoining courtesy to the customers, was published by the Erie Railroad, around 1907, and was astonishing news. Of all railroads at that time the Erie was publicly regarded as most hopeless. Utility companies followed. New York Edison gave the idea a twist by enjoining telephone courtesy.

There was a young man in the general offices of the Pennsylvania Railroad who had radical ideas. He maintained that the golden age of railroading, the days of giants making fortunes, were passed, and that management would have to come down and deal with the public. For a beginning he urged prompt publication of casualty lists following accidents, something unheard of. He lost his job, eventually, but made a better one for himself introducing John D. Rockefeller, Sr., to the public. It was he who started the oil magnate giving away dimes, and calling attention to his golf scores. That was Ivy Lee.

Soon the sales mind was established, and has become ever more necessary in utility management, and it may well be that there is a broader future before it.

Because, for lack of salesmanship, some of the utilities have come into difficult times, and may be dying on their feet, or on their wheels, because the transit companies in cities are hardest hit, trying to make do with decreasing revenue, cutting down on their services, getting more and more obsolescent in their equipment.

Everywhere, transportation in cities is an acute problem to the stenographer getting to her work by bus, to her employer driving ten to twenty miles morning and night. Something to ease this strain is palpably needed. It might well be a new kind of public transportation to do for our cities what the trolley car did sixty years ago.

THE automobile has wrought a revolution in American life, but is being found a mixed blessing. Nevertheless, car ownership steadily increases—and traffic problems.

The automobile appears to be the

chief competitor of the transit companies, outdistancing such factors as the 5-day week, and even television. For the stenographer's employer moves the offices and the plant out into an area not served with public transportation, and by various arrangements she travels in an automobile.

To sell the automobile, Detroit has been spending hundreds of millions of dollars yearly for many years. The 1951 total is estimated at nearly $400,000,000, despite expectations at the beginning of the year that advertising would be reduced for emergency conditions.

How much money has been spent in advertising and selling for transit passengers during these same years?

By comparison, almost nothing.

For most businesses, 5 per cent of the gross income is regarded as normal for advertising and sales. Transit companies over the land have been spending less than 1 per cent. A company doing $20,000,000 yearly would, at that ratio, have $1,000,000 for promotion of riding. Generally, it is lucky to get one-half of 1 per cent from regulatory bodies, much of which will go for defensive purposes, as settling claims and opposing suits.

Here we have a clear conflict between the sales and the technical minds.

PASSENGER revenue is decreasing, the company goes to the attorneys, engineers, and technicians who make up most regulatory bodies, and asks for allowances to promote business.

Traffic is falling; therefore, says the technical mind, expenses must be cut. Money for advertising looks like an unnecessary item, and so is one of the first to be adjusted downward.

There is an old story about the cow, green spectacles, and sawdust, which the sales mind recalls, and maintains that regulatory bodies need sales-minded members. But the technical mind itself is stirring.

There is the popular accusation that cold science, detached from the humanities, is largely responsible for the present predicament of the world. True or false, it has set the technician thinking, wondering if more liberal education might not have been a good thing for him—even going back to school for some humanities.

Then there is responsibility thrust upon him in his technical career. He succeeds so well in research and production that his company expands, needs executives to manage his department in the business. Overnight he finds himself promoted, with the Old Man of the Sea on his back, and as a technical editor puts it, "wishes he had studied a little less about the kinetics of chemical compounds in the world of Epicurus and Mendelejeff, and more about the kinetics of the dollar bill in the world of Truman and Stalin."

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¶ "AGAIN *and again, in this cockeyed world, arises the desire to have people otherwise than what they are. If the technical fellow would only learn the sales angle, if the sales mind could only be ballasted with some engineering, some law—what a grand world it could be!*"

THE institutes and colleges are revising their programs to include more of the humanities.

Old boys are going back, and the young technicians coming up should be a different breed of cats, knowing something about the man in the street, the lady in the kitchen, and while hoping that the multimillionaire will leave alma mater something in his will, going back to where he got it, and adopting the same methods of salesmanship, advertising, and promotion.

In Chicago, a lot of utility executives got together for a formal meeting, followed by a huddle. The meeting went off well, various technicians endeavoring to show how they had contributed to the advancement of the art. In fact, trying to sell themselves, but in technical lingo not very clearly understood by the patient sales-minded fellows who listened. General objective —to impress the audience with their technical knowledge. No spark, no fire, no feeling.

But at the huddle—how different!

Sales and science chipped and chaffed each other, spoke American, traded information, everybody understood everybody else, made new friends, went home with something he could use, and good feeling. Without the huddle, the affair might have been time wasted.

More huddles in business, and more common mother tongue, are clearly needed—and undoubtedly coming.

"ONCE upon a time the idea of carrying coals to Newcastle was as silly as giving dimes to Rockefeller.

"The British mines in those days produced enough coal not only to warm the English hearthsides but to feed many of the factories of Europe as well.

"But that was once upon a time when Britain's coal industry was privately owned and managed, and when—so the Labor thinkers and planners said—the industry was backward and inefficient.

"Now the coal mines of Newcastle are owned by His Majesty's government and they are run not by backward businessmen but by the prescient planners of His Majesty's government.

"The other day one of these planners, His Majesty's Minister of Fuel, Mr. Philip Noel Baker, got up in the House of Commons and promised that the government would buy coal abroad this year to meet 'urgent commitments.'

"Everybody was very happy. You see, there is still plenty of coal in the ground but there isn't enough above ground, and everybody remembered 1947 when the Labor government forgot to import enough coal and everybody was pretty chilly.

"They were happy that the planners had learned not to count too much on their planned production and so were planning to buy enough to prevent a shortage of coal at Newcastle."

—EDITORIAL STATEMENT,
The Wall Street Journal.

Washington and the Utilities

DEPA Gets More Metals Allocated

In one of his first official acts as the new head of the Defense Electric Power Administration, James F. Fairman, formerly of Consolidated Edison Company of New York, Inc., was able to announce some pretty good news to the industry. This was the result of some negotiations which had started under his predecessor, C. B. McManus, who returned to his old post as president of the Georgia Power Company on July 1st. It had to do with getting more aluminum, copper, and steel for the electric utilities during the third quarter.

When the original allocations were made for the third quarter by the Defense Electric Power Administration, there was consternation in the ranks of the industry. A special meeting was called of the electric utility advisory council. Following this meeting, former DEPA Administrator McManus told a press conference that the electric power industry could not keep abreast of its defense needs if the third-quarter cutbacks on aluminum, copper, and steel were permitted to stand.

The council took the problem direct to Wilson following its meeting and subsequently it was learned that DEPA had allowed an upward revision of the third-quarter allocations. DEPA did not get all of the "minimum requirements" previously requested, but it did get about 50 per cent of the cutbacks restored.

Below is a quick analysis of the third-quarter metal allocations to the electric utilities for all three metals.

No New Gas Pipelines

Folks in New England and some other areas who have been looking forward to natural gas will have to resign themselves to waiting until the present steel scarcity has subsided. This was seen in the recent statements by the new assistant deputy of the Petroleum Administration for Defense in charge of its new gas branch. He is C. P. Rather, who indicates that the gas industry is just as much worried about shortage of steel pipe as the electric utilities were concerned in their plight over control materials allotment.

The allocation of gas, if supplies are inadequate, as well as gas company interconnections are being considered as possible emergency steps. The immediate PAD problem is the allocation of steel for oil and gas pipelines for the third quarter of 1951. "It is no secret that PAD is very unhappy," said Rather.

The estimated requirements of pipe for gas transmission and distribution for the third quarter were 878,300 tons. Rather added that "actually the needs are much greater because of the accumulation

	Requested	*Originally Allocated*	*Latest Revision*
Aluminum	47,000,000 lbs.	25,000,000 lbs.	38,000,000 lbs.
Copper	118,000,000	75,000,000	77,000,000*
Steel	337,000 tons	270,000 tons	300,000 tons

*Former DEPA Administrator McManus, in a statement to the press, had said that the industry could "get by" with 81,000,000 tons of steel.

of unfilled demands during the second quarter." He said that less than 517,000 tons of pipe are available to do a gas transmission and distribution job needing at least 878,000 tons. In other words, gas transmission and distribution will receive something less than 59 per cent of its requirements, and oil transportation will receive about 42 per cent of its requirements.

PAD is stressing the completion of jobs already under way in order to meet the winter season demand. Service to the armed forces and the Atomic Energy Commission will receive priority consideration. Thereafter, projects are given priority in the order of importance. Maintaining existing service will come ahead of extending service to new areas. This means that New England and some other areas expecting gas will not have it until after the scarcity subsides and the needs of pipelines already started are filled.

New Controls Uncertain

PRESIDENT Truman's proposal to broaden the utility rate increase notice provision, in the next defense controls law, was definitely turned down during the preliminary wrestling with proposals to extend the Defense Production Act. Both the Senate and House Banking and Currency committees voted, on the same day, to reject President Truman's proposal that the Office of Price Stabilization should be given thirty days' notice and opportunity to intervene in the case of all proposed utility rate increases. The Senate vote was about 2 to 1 against changing the provision of the present Defense Production Act. Under the old law (still in effect by stop-gap extension), the notice, and opportunity to intervene, applies only to rate changes involving wholesale service (sales for resale), such as rates of pipeline companies or wholesale rates of power companies to Rural Electrification Administration co-ops.

The action of the two congressional committees was taken in the course of a series of votes on proposed changes. It does not follow, however, that Congress will finally approve any new long-range version of the Defense Production Act. There is still a chance that Congress may have to vote the same old law without change. In view of the committees' action, the net result would be the same (as far as public utility rate increases are concerned), regardless of whether Congress passes a new law or extends the old one. House committee approval of government plant building powers, one of the President's proposals which did get some attention, is not regarded as having a chance in the final analysis.

THE recent appointment of Manly Fleischmann to be head of DPA, as well as retaining his old job as head of the National Production Authority, is quite a long way from internal reorganization of the defense controls setup which Mobilization Director Wilson had in mind. For the past several weeks, stories have been floating around Washington that DPA would absorb NPA. Other stories had it that NPA would absorb DPA. But now it appears that both agencies are to be kept in existence with a somewhat clearer line of demarcation. With Mr. Fleischmann in charge of both, the possibility of future conflict between the two agencies was thought to be minimized.

Wilson apparently was caught between rival claims of DPA that it should be given more clear-cut authority over NPA and the feeling among Cabinet departments that they should not lose their defense branches, or any of their emergency control powers. NPA still is officially part of the Commerce Department, just as DPA and PAD are parts of the Interior Department; and just as the Agriculture Department exercises so-called "claimant" authority for agricultural operations.

Fleischmann's new position as head of DPA makes him the No. 2 man in the control setup, subject only to Mobilization Director Wilson, even though in his dual capacity as head of NPA he is still technically an employee of Commerce

Secretary Sawyer. Following Senate confirmation it is expected, however, that Mr. Fleischmann will step out with some firm decisions carrying out Mr. Wilson's general policy.

In his NPA rôle, Mr. Fleischmann has won a reputation for being conscientious, hard-driving, and able to make up his mind, after sifting contradictory opinions. Little of the criticism that Congressmen and private groups have leveled at the controllers has hit the NPA boss.

BASED on his record, he can be expected to favor extensive controls, even to rationing metals to the "nonessential" industries—autos, appliances, baby buggies, and the like—on a company-by-company basis. Under his guidance, DPA may be less active than in the past in cutting down allocations of metal for railroads, farm machinery, and other "defense-supporting" activities. NPA under Mr. Fleischmann has supported requests for increased amounts of material for such industries.

On the other hand, Mr. Fleischmann can also be expected to insist on keeping the rations of materials for weapons in line with actual requirements based on military contracts.

In the past, DPA has been criticized for making up its mind too slowly; railroad car builders complain that they got their third-quarter allocations too late to place orders with the steel mills for many of the items they need. Other DPA activities—tax amortization and defense loans—have been loosely co-ordinated, with a swarm of lower-ranking bureaus making most of the decisions.

For its part, DPA has grumbled that NPA orders to industry were not always in line with DPA's allocations.

These criticisms convinced Mr. Wilson he should do some reorganizing. His decision, announced last month, was to make Mr. Fleischmann both DPA and NPA chief and thus "more closely integrate the activities of the two agencies." How long that integration will last is a question. There was said to be speculation that Thomas S. Nichols, president and chairman of the board of Mathieson Chemical Company, may later become head of the National Production Authority. He has been deputy chief but was reported returning to his company to "attend to pressing affairs."

Mr. Wilson said Mr. Nichols had "agreed to accept an important post in the defense production program later in the summer." He did not say what the job would be.

Pipelines Need More Steel

THE Defense Production Administration has been asked to give the oil and gas industry about 40 per cent more steel in the fourth quarter than it allotted for the current quarter.

The Petroleum Administration for Defense, claimant agency for the industry, asked for about 2,300,000 tons for the final quarter of this year—calling this a rock-bottom figure.

DPA gave the industry 1,584,000 tons for the third quarter, about two-thirds of what PAD asked for. Whether this will be boosted is doubtful, despite an angry protest filed by Secretary of the Interior Chapman with DPA late last month.

According to one informed official, it now seems doubtful that the industry can get delivery of more than 1,300,000 tons in the current quarter, chiefly because steel mills have been short of plate. This has led PAD to cut most construction and operating programs to the bone, particularly those for laying new gas distribution and transmission lines. New England and the Pacific Northwest will get no gas lines this coming winter.

PAD has asked for only 600,000 tons to complete natural gas transmission and distribution lines to the most critical areas—only those projects advanced enough to get gas to consumers this winter and which have assured gas supplies. The eastern seaboard and Appalachian region will get about 330,000 tons.

For domestic production, PAD asked for 110,000 tons of line pipe. (DPA allotted 55,000 tons in the third quarter and 44,000 tons of oil country tubular goods.)

Exchange Calls And Gossip

Communications Labor Uneasy

WITH Congress still undecided about a long-range emergency control law, labor unions in the communications industries are showing increasing signs of unrest. The possibility of a telephone strike may depend in part on whether Congress or the Wage Stabilization Board decides to limit wage increases in those industries including telephone companies and other utilities, which are not subject to price control by the OPS.

Sporadic local walkouts have been taking place over the last few weeks, notably in Virginia and southern California, with other areas threatened. Although actual strike was deferred at the last minute, the AFL Commercial Telegraphers Union vote to pull 35,000 Western Union telegraphers, clerks, and messengers off the job July 2nd, to back up demands for a 25-cent hourly wage increase, was a straw in the wind. It has been the contention of the CIO Communications Workers of America (telephone union) and the AFL Telegraphers Union that WSB should not intervene to prevent or limit the size of any wage increase obtained from employers which are not subject to Federal price controls.

More progress was reported late in June by representatives of the Chesapeake & Potomac Telephone Company of Virginia and the Communications Workers of America after another day of negotiations in their long-standing dispute over a new contract for some 6,000 telephone workers in the Old Dominion state. Both sides said some progress was made toward an agreement.

The company made one concession on the proposed new wage scale, agreeing to an increase of $2 a week for service observers and central office clerks. The union said this was a minor issue and involved comparatively few employees.

THE CWA announced in Washington on June 27th that a new one-year contract with the American Telephone and Telegraph Company, granting approximately 20,000 long-distance operators and servicemen a wage increase of 10 per cent, had been signed in New York.

The agreement covers employees of the company in 42 states. On the same day several hundred plant and commercial accounting employees of the Chesapeake & Potomac Telephone Company of Baltimore, a separate unit of the Bell system, left their jobs in protest of the failure of the company to agree to a new contract which includes a wage increase.

The Baltimore walkout was similar to the numerous work stoppages that have occurred in Virginia. Company officials said the stoppage did not affect the service since traffic employees—the operators—were not involved.

As in the case in Virginia, the Baltimore workers have been offered a 10 per cent pay increase, an official of the company said, plus certain other concessions as to differential pay for evening and night work.

On June 25th, the CIO Communications Workers of America struck against the Pacific Telephone & Telegraph Company, throwing up picket lines at the Los Angeles, Hollywood, and Pasadena offices. The union said some 10,000 workers will stay off the job until contract negotiations are settled.

Bell Long Lines Reorganize

SHORTLY before the sudden passing on June 28th of Leroy A. Wilson, president of American Telephone and Telegraph Company, the Long Lines department, nation-wide operating unit of the American Telephone and Telegraph Company, announced a series of organization changes, including the appointment of executives to direct all activities in the company's newly formed eastern, central, and western areas.

Purpose of the new alignment, according to the company, is to set up common boundaries for its various departments, to decentralize some of its operations, and to place higher levels of supervision closer to field activities.

The eastern area, with headquarters in New York city, includes the New England states, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. The central area, with headquarters in Cincinnati, Ohio, takes in Michigan, Indiana, Ohio, Kentucky, Tennessee, North and South Carolina, Louisiana, Mississippi, Alabama, Georgia, and Florida. The remaining states fall in the western area, which has headquarters in Kansas City, Missouri.

Chudoff's "Off-the-Record" Bill

THE administration does not look with favor on the Chudoff Bill (HR 4404), which would prohibit government employees from recording telephone conversations. The bill, sponsored by Representative Chudoff (Democrat, Pennsylvania), has been referred to the House Committee on Interstate and Foreign Commerce, where it will probably die without action. The bill would amend the Federal Communications Act by adding a clause forbidding any "officer or employee in the executive branch of the government" who participates in a telephone conversation, from making a "sound recording of all or any part of such conversation without having first obtained permission from all other persons participating in such conversation."

Penalties up to $5,000 fine and two years' imprisonment, plus loss of civilian jobs or dismissal from the armed forces would be provided. It is common knowledge in Washington that the White House, the Pentagon, and other key establishments are well provided with recording apparatus which are not equipped with the warning ("beep") device required by the FCC.

Telephone Toll Prices via Radio

THE Peninsular Telephone Company of Tampa, Florida, recently became the first independent telephone company in the United States to adopt the microwave system of transmission. Equipment for the new system will be manufactured and installed by Federal Telecommunication Laboratories, Inc., of Nutley, New Jersey, research unit of the International Telephone & Telegraph Corporation.

Federal has produced microwave links which are now operating on more than 12,000 channel miles of noncommon carrier fixed circuits in the United States and common carrier and noncommon carrier circuits abroad.

The Peninsular Telephone Company, which operates approximately 160,000 telephones in the west-central part of Florida, has ordered the building of a microwave radio relay link between its central offices in Tampa and Bartow, a distance of 40 miles. This new link, located in the center of Florida's citrus and phosphate mining industries, will augment existing wire line circuits and provide an alternate route in the event of wire or cable failure.

The FCC has granted Peninsular Telephone Company a construction permit to operate as a common carrier in the 890-940 mc band. The primary allocants of this frequency range are industrial, scientific, and medical users.

The new microwave system will employ a minimum of inexpensive receiving type tubes. Other features include rugged construction, plug-in type channeling units, and simple repeater drop and insert equipment.

Financial News and Comment

By OWEN ELY

The Gas Industry's Huge Expansion Program

THE gas industry at the end of 1951 will probably represent an investment of over $10 billion, compared with $5 billion at the end of World War II. The industry is growing even more rapidly (percentagewise) than the electric utility industry—the latter's investment at the end of 1951 is estimated at $16.5 billion (excluding nonelectric plant) as compared with about $9.6 billion in 1946.

The gas industry's expenditures for expansion last year approximated $1.2 billion (most of which was spent on the natural gas pipeline systems), and the estimate for this year is over $1.5 billion. The industry spent nearly $4 billion during 1946-50, and it is now estimated that some $4.6 billion will be spent in the 5-year period 1951-55 (compared with an earlier estimate of $3.2 billion for 1950-54), as indicated by the accompanying table. Of course the expansion plans might be curtailed by lack of steel for pipelines, etc.

This huge construction program involves continued heavy financing for the gas industry. Tentative estimates indicate that about $1.4 billion of the $4.6 billion needed will be generated from internal cash, leaving about $3.2 billion to be raised through the sale of securities. It is estimated that of the latter amount some $2.3 billion will be raised through debt financing and about $.9 billion through sale of preferred and common stocks.

THE gas transmission and distribution systems now total more than 375,000 miles, of which about 255,000 represent natural gas transmission lines. The longest natural gas line in the world, the 1,900-mile line from the Gulf coast to New York city, was virtually completed by Transcontinental Gas Pipe Line Corporation at the end of 1950 at a cost of some $200,000,000. Northeastern Gas Transmission Company of Boston obtained a "green light" from the FPC last November to supply about 55 per cent of New England's gas requirements. Algonquin Gas Transmission Company, another Boston corporation, will supply the remaining 45 per cent. New England Gas & Electric Association and Eastern

DEPARTMENT INDEX

GAS UTILITY CONSTRUCTION EXPENDITURES, BY TYPE OF GAS AND BY PLANT FUNCTION, 1950-1955

(Millions of Dollars)

Type of Gas and Plant Function	*Total Actual 1946-1950*	*Actual 1950*	*Forecast*					*Total Forecast 1951-1955*
			1951	*1952*	*1953*	*1954*	*1955*	
Natural Gas—Total	$3,433.4	$1,095.7	$1,433.8	$1,205.8	$636.4	$494.1	$424.8	$4,194.9
Production		76.7	89.1	95.1	58.0	38.0	34.6	314.8
Underground Storage	372.6	25.7	29.8	37.3	13.9	8.7	2.3	92.0
Other Storage		9.3	10.8	9.1	9.5	13.5	3.8	46.7
Transmission	2,187.8	713.3	994.8	773.0	295.4	185.8	146.8	2,395.8
Distribution	754.2	236.4	269.9	251.9	235.3	229.2	218.5	1,204.8
General	118.8	34.3	39.4	39.4	24.3	18.9	18.8	140.8
All Other Types of Gas—Total	561.1	102.6	107.8	90.6	71.1	59.7	68.0	397.2
Production and Storage	229.7	31.7	30.2	30.5	20.3	14.5	16.2	111.7
Transmission	20.1	3.0	1.8	4.4	4.4	3.0	4.0	17.6
Distribution	287.2	63.2	70.3	50.2	42.2	38.2	41.3	242.2
General	24.1	4.7	5.5	5.5	4.2	4.0	6.5	25.7
Total Industry—Total	3,994.5	1,198.3	1,541.6	1,296.4	707.5	553.8	492.8	4,592.1
Production and Other Storage	602.3	117.7	130.1	134.7	87.8	66.0	54.6	473.2
Underground Storage		25.7	29.8	37.3	13.9	8.7	2.3	92.0
Transmission	2,207.9	716.3	996.6	777.4	299.8	188.8	150.8	2,413.4
Distribution	1,041.4	299.6	340.2	302.1	277.5	267.4	259.8	1,447.0
General	142.9	39.0	44.9	44.9	28.5	22.9	25.3	166.5

Source: Bureau of Statistics, American Gas Association.

Gas & Fuel Associates each own about 33 per cent of Algonquin stock, while Texas Eastern Transmission Corporation owns about 25 per cent; but NEGEA may increase its participation to 37½ per cent. Construction will be financed largely through mortgage bonds sold to institutions, with a common stock equity of about 25 per cent.

The only important area in the United States still without natural gas is the Pacific Northwest, but plans are reported under way to bring gas to this area from Texas and Canada. While the period of construction of major transmission lines now seems to be almost over, a tremendous amount of work is being done to extend distribution facilities, increase the capacity of existing lines, etc.—as indicated by the daily press releases of the Federal Power Commission.

Natural gas reserves appear ample for many years to come, despite ever-increasing consumption. The AGA Committee on Natural Gas reserves has estimated proved reserves of natural gas at 185 trillion cubic feet as of January 1, 1951 —an increase of 5 trillion feet over reserves at the beginning of 1950, despite the use of nearly 7 trillion feet in 1950.

In the retail service division of the industry the transition from manufactured to natural gas continues at an accelerated pace. Over twice as many customers now receive natural gas as are served with the manufactured product; the former gained 12.7 per cent in 1950 while the latter dropped 14.8 per cent. Customers receiving mixed gas—sometimes a transition stage in conversion to natural—increased 24.8 per cent. It is also surprising to note that nearly 6,000,000 customers are now being served with LP-G (liquefied petroleum gas) in sparsely settled areas not served by local gas utility companies.

Gas revenues in 1950 almost reached the $2 billion mark as contrasted with the $4.8 billion sales of the electric utility industry. Of the total revenues, natural gas contributed about 68 per cent, manufactured gas 23 per cent, mixed gas 6 per cent, and LP about 3 per cent. Natural gas revenues jumped 25 per cent (partly due to higher rates resulting from higher costs of gas) and mixed gas 19 per cent, while manufactured gas gained only 4 per cent.

Sales of gas appliances also reached new high levels in 1950. Over 3,100,000 gas ranges were sold, a gain of nearly 50 per cent over the previous year's sales, and about 2,300,000 gas water heaters were sold, compared with 1,400,000 in 1949. Central heating units reached a new high level of over 1,000,000, gas refrigerator sales were 50 per cent ahead of 1949, and gas air-conditioning equipment also made new sales records. New gas appliances such as laundry driers and incinerators also made a good showing. However, 1951 sales may be slowed somewhat by credit regulations.

The percentage relationship between natural gas and other energy sources indicates its importance in the defense picture. At the beginning of World War II in 1941, natural gas was contributing 11.1 per cent of the energy consumed each year. At the end of 1949 the ratio had increased to 18.7 per cent, a gain of more than 70 per cent, while in 1950 natural gas was furnishing about 22 per cent of the total energy supply of the United States, nearly 100 per cent more than in 1941.

In April, 1951, the natural gas industry sold 202 trillion cubic feet of gas to ultimate consumers, an increase of 13.2 per cent over last year. Revenue gains for the month were as follows compared with 1950: residential 9.4 per cent, commercial 8.7 per cent, industrial 22.2 per cent, and total sales 13.7 per cent.

In the first four months of 1951 natural gas revenues and net income made the following showing, as reported by the Federal Power Commission:

	Percentage Change in	
	Revenues	*Net Income*
January	28.6%	14.7%
February	26.4	18.5
March	14.5	D 1.3
April	16.4	D 4.4
Twelve months ended April .	25.7	20.0

In the month of April Federal income taxes were 66 per cent higher than a year ago. Had they increased at a "normal" rate, net income would have shown a gain of nearly 16 per cent over last year, it is estimated. (See page 119.)

Electric Utilities' April Earnings Unfavorable

THE trend of monthly net income for all class A and B privately owned electric utilities has been as shown in the table below in the first four months of 1951, as compared with last year.

Why did April make such a poor showing? The increase in kilowatt-hour sales and in total revenues (over last year) was slightly larger than in March. However, the comparison for expenses, particularly fuel, was quite unfavorable. In April fuel costs were up 14.6 per cent, in March only 8 per cent. Wage costs were up 11.1 per cent against a 9 per cent increase in March; and miscellaneous costs 6.1 per cent against 2.5 per cent. Taxes on the other hand increased only 24.7 per cent in April compared with 29 per cent in March. Miscellaneous utility operations gained only 1.3 per cent in April *versus* 12.1 per cent gain in March. Income deductions made about the same showing as in March.

Drought conditions in the South have probably been somewhat of a handicap there this year. In April generation by water-power plants was only 30.8 per cent of the total kilowatt hours compared with 32.6 per cent in April, 1950. However, this trend also prevailed in earlier months this year. It is difficult to trace the exact reasons for the unfavorable showing with respect to fuel costs in April; possibly rising unit prices were reflected to some extent.

United Corporation Plan Approved by SEC

THE SEC recently approved an amended plan filed by United Corporation, which should complete its transition from a utility holding company to an investment company. One or two features of the plan, such as cancellation of the warrants, are subject to court approval.

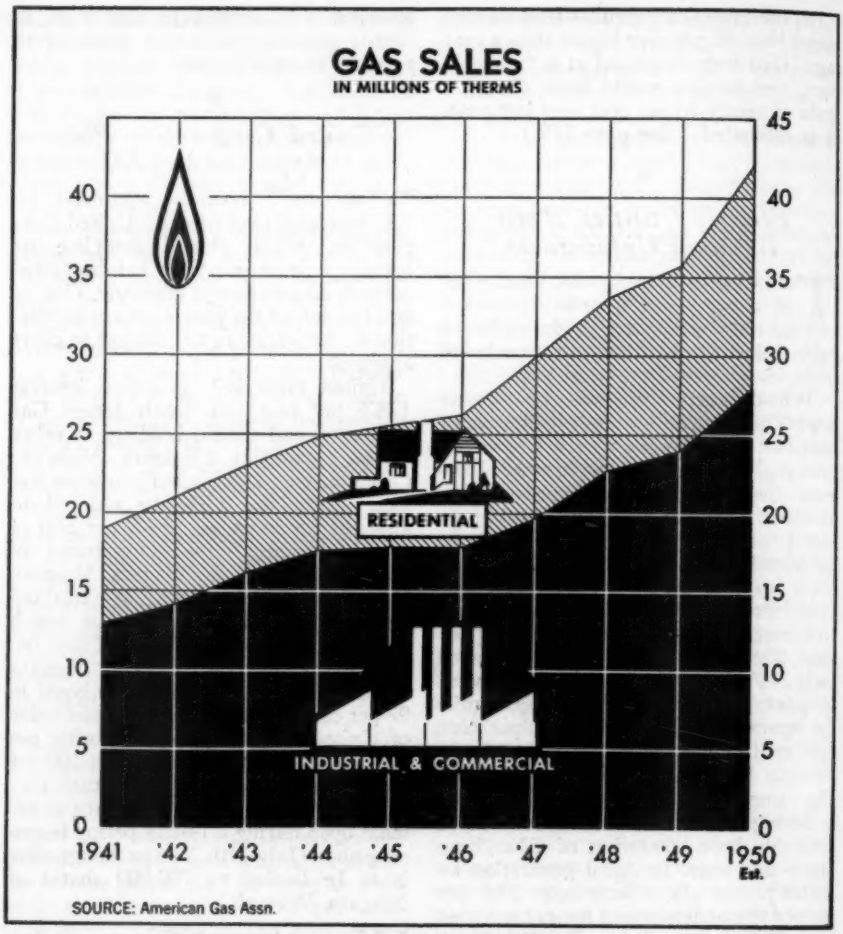
United must sell its entire interest (28.5 per cent) in South Jersey Gas Company, and certain holdings in other utility companies (Niagara Mohawk, Columbia Gas, and United Gas Improvement Company) must be reduced to amounts not in excess of 4.9 per cent of the outstanding stock. Divestment of United's interest in Niagara Mohawk Power common stock may be expedited by a special feature of the plan, which permits United stockholders (if they desire) to exchange their stock for Niagara common having a market value equal to 97 per cent of the average net asset value of United stock during the offering period. (Odd lot holders would get 100 per cent of net asset value, paid in cash.)

These voluntary exchanges are to remain open during a 14-day period beginning about July 11th. The exchange offer is to be limited to 700,000 shares of Niagara Mohawk.

WHITE, WELD & COMPANY a few weeks ago published an 8-page description of United Corporation common stock which concluded as follows:

	(Millions of Dollars)		*Per Cent*	*Est. Decrease In Common*
	1951	*1950*	*Change*	*Share Earnings**
January	$76.5	$78.1	D2.0%	D 7.0
February	80.8	78.2	3.4	D 1.6
March	71.6	71.8	D .3	D 5.3
April	71.0	74.9	D5.2	D10.2

*Assuming an increase of 5 per cent in shares outstanding.

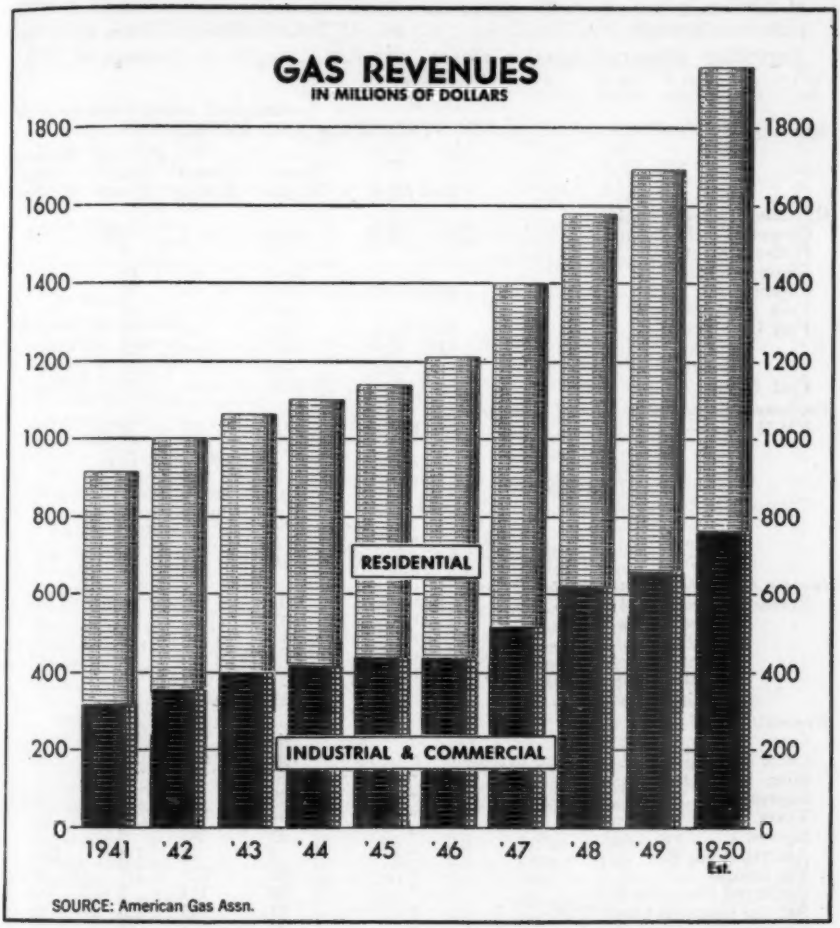


. . . In comparison with equivalent taxable yields, the tax-free return on United Corporation common stock appears exceptionally attractive to investors in the middle and upper tax brackets. At a price of 4½ this stock may be purchased for little more than the current net asset value of $4.35 per share and, as its tax advantages are more widely recognized, moderate appreciation may result.

Rate Increases

A UTILITY executive has written us as follows (with reference to an item on earnings and rate increases in the May 24th issue):

I entirely agree with you that the industry cannot expect to absorb any further tax increases solely through increased business or economies but must look to the rate increase route for relief, and in this connection it is



my feeling that the sooner utilities apply for and obtain increases, the better, as each increase granted should tend psychologically to make increases easier to obtain by the other companies. Also I think the first increase would tend to make the second one easier at a later date if this should prove necessary.

It seems to me an entirely healthy thing that it be recognized that electric utility service is no exception to economic laws and must be expected to rise and fall with general price levels. The expansion of the industry in the last five years has been sufficient with low money costs to absorb the higher cost of wages and materials, and before that for another five years the increased use of reserve capacity due to the war conditions enabled the industry to meet rising costs; so that I think as a result, utility management has too often come to think traditionally electric rates are something which are occasionally reduced or at least left static, regardless

of what is going on in the economic picture as a whole.

Regarding industrial rates, a recent *Wall Street Journal* headline is of interest: "TVA's Inflation: Rates to Industry Are Rising by an Average of 15%."

CURRENT UTILITY STATISTICS AND RATIOS

	Unit Used	Latest Month	Latest 12 Mos.	Per Cent Latest Month	Increase Latest 12 Mos.
Operating Statistics (April)					
Output KWH—Total	Bill. KWH	29.3	345.3	15%	16%
Hydro-generated	"	9.0	—	9	—
Steam-generated	"	20.3	—	19	—
Capacity	Mill. KW	70.9	—	10	—
Peak Load (March)	"	59.3	—	13	—
Fuel Use: Coal	Mill. tons	7.9	—	16	—
Gas	Mill. MCF	58.9	—	23	—
Oil	Mill. bbls.	4.8	—	D10	—
Coal Stocks	Mill. tons	32.3	—	79	—
Customers, Sales, Revenues, and Plant (April)					
KWH Sales—Residential	Bill. KWH	4.7	52	14%	14%
Commercial	"	3.5	41	10	10
Industrial	"	11.0	126	19	22
Total, Incl. Misc.	"	25.7	297	13	14
Customers—Residential	Mill.	29.0	—	5	—
Commercial	"	4.2	—	1	—
Industrial	"	.5	—	3	—
Total	"	36.0	—	4	—
Income Account—Summary (April)					
Revenues—Residential	Mill. $	135	1,532	11%	11%
Commercial	"	97	1,139	7	8
Industrial	"	120	1,397	14	16
Total, Inc. Misc. Sales	"	388	4,495	11	11
Sales to Other Utilities	"	31	385	6	5
Misc. Income	"	19	207	5	7
Expenditures					
Fuel	"	64	789	15%	12%
Labor	"	81	951	11	9
Misc. Expenses	"	64	778	6	3
Depreciation	"	39	449	10	12
Taxes	"	94	1,015	25	25
Interest	"	23	265	8	7
Amortization, etc.	"	2	21	D4	D4
Net Income	"	71	819	D5	4
Preferred Div. (Est.)	"	10	114	9	9
Bal. for Common Stock (Est.)	"	61	705	D6	4
Common Dividends (Est.)	"	43	516	8	9
Balance to Surplus (Est.)	"	18	189	D18	24
Electric Utility Plant (April)	"	$19,460	—	9%	—
Reserve for Deprec. and Amort.	"	4,000	—	8	—
Net Electric Utility Plant	"	15,460	—	10	—
Utility Financing (April)*					
Bonds	"	110	903**	D43%	26%
Stocks	"	142	261**	D14	D21
Total	"	252	1,164**	D5	11
Life Insurance Investments (January 1st-June 16th)					
Utility Bonds	"	—	314	—	D43%
Utility Stocks	"	—	26	—	D77
Total	"	—	340	—	D49
Per Cent of All Investments	"	—	6%	—	D70

D—Decrease. *Data for all utilities (electric, gas, telephone, etc.), including refunding issues. **Four months ended April 30th.

RECENT FINANCIAL DATA ON GAS COMPANY STOCKS

		6/27/51 Price About	Indicated Dividend Rate	Approx. Yield	Share Earnings# Cur. Period	Prev. Period	% Increase	Price-Earnings Ratio	Div. Payout
Producers and Pipeline Companies									
O	Commonwealth Gas	10	$ .15	1.5%	$ .74d	$ .62	19%	13.5	20%
S	Mississippi Riv. Fuel	31	2.00	6.5	3.05m	NC	—	10.2	66
O	Missouri-Kans. P. L.	49	1.60	3.3	1.66d	4.32	D62	—	96
S	Southern Nat. Gas	42	2.50	6.0	3.63m	3.15	15	11.6	69
O	Southwest Nat. Gas	6	.20	3.3	.38m	.21	81	—	53
O	Tenn. Gas Trans.	22	1.40	6.4	1.76m	1.20	47	12.5	80
O	Texas East. Trans.	17	1.00	5.9	1.93d	1.49	30	8.8	52
O	Texas Gas Trans.	16	—	—	1.95d	.81	141	8.2	—
	Average			4.7%				10.8	
Integrated Companies									
S	American Natural Gas	30	$1.60	5.3%	$2.98m	$1.85	61%	10.1	54%
S	Columbia Gas System	14	.80	5.7	1.28m	.95	35	10.9	63
S	Consol. Nat. Gas	55	2.25	4.1	5.76m	4.10	40	9.5	39
S	El Paso Nat. Gas	27	1.60	5.9	2.77a	1.42	95	9.7	58
S	Equitable Gas	20	1.30	6.5	1.94m	1.91	2	10.3	67
O	Interstate Nat. Gas	35	2.50	7.1	3.25d	2.50	30	10.8	77
O	Kansas-Neb. Nat. Gas	19	1.12	5.9	1.95d	1.63	20	9.7	56
C	Lone Star Gas	26	1.40	5.4	2.25m	1.73	30	11.6	62
S	Montana-Dakota Utils.	17	.90	5.3	1.47m	1.34	10	11.6	61
O	Mountain Fuel Supply	16	.70	4.4	.99d	.91	9	16.2	61
C	National Fuel Gas	13	.80	6.2	1.40m	1.01	39	9.3	57
O	National Gas & Oil	7	.40	5.7	1.04d	.62	68	6.7	38
S	Northern Nat. Gas	35	1.80	5.1	2.09m	2.19	D5	16.7	86
C	Oklahoma Nat. Gas	30	2.00	6.7	3.20a	2.90	10	9.4	63
C	Pacific Pub. Serv.	14	1.00	7.1	2.23d	2.08	7	6.3	45
S	Panhandle East. P. L.	49	2.00	4.1	2.73m	2.46	11	17.9	73
S	Peoples Gas Lt. & Coke	113	6.00	5.3	9.48m	9.32	2	11.9	63
O	Southern Union Gas	19	.80	4.2	1.51d	1.34	13	12.6	53
S	United Gas	20	1.00	5.0	1.62m	1.41	15	12.3	62
	Average			5.5%				11.2	
Retail Distributors									
O	Atlanta Gas Light	21	$1.20	5.7%	$2.27m	$1.97	15%	9.3	53%
C	Bridgeport Gas	25	1.40	5.6	1.47d	1.88	D22	17.0	95
O	Brockton Gas Lt.	23	1.40	6.1	1.44d	1.48	D3	16.0	97
S	Brooklyn Union Gas	46	3.00	6.5	3.60d	4.32	D17	12.5	67
O	Central Elec. & Gas	10	.80	8.0	1.07m	.93	15	9.3	75
C	Consol. Gas Util.	12	.75	6.3	1.51a	1.48	2	7.9	50
O	Hartford Gas	38	2.00	5.3	2.68d	2.67	—	14.2	75
O	Haverhill Gas Lt.	33	1.80	5.5	2.04my	2.07	D1	16.2	88
O	Houston Nat. Gas	16	.80	5.0	1.06ju	1.45	D27	15.1	75
O	Indiana Gas & Water	22	1.40	6.4	2.20a	2.01	9	10.0	64
O	Jacksonville Gas	35	1.40	4.0	4.97d	4.77	4	7.0	28
C	Kings County Ltg.	9	.40	4.4	.45d	.64	D30	20.0	89
S	Laclede Gas	7	.40	5.7	.84m	.77	9	8.3	48
O	Minneapolis Gas	17	1.05	6.2	1.39m	1.19	17	12.2	76
O	Mobile Gas Service	30	1.60	5.3	3.50m	2.66	32	8.6	46
O	National Util. of Mich.	12	—	—	1.08m	.57	89	11.1	—
O	New Haven Gas Lt.	28	1.60	5.7	1.92d	1.70	13	14.6	83
S	Pacific Lighting	51	3.00	5.9	5.42m	3.29	65	9.4	55
O	Providence Gas	10	.50	5.0	.57d	.56	2	17.5	88
C	Rio Grande Valley Gas	2	.12	6.0	.19d	.19	—	10.5	63
O	Rockland Gas	35	1.70	4.9	4.63d	4.41	5	7.6	37
O	Seattle Gas	15	.60	4.0	1.57m	1.36	15	9.6	38
O	So. Jersey Gas	17	—	—	.53d	.41	29	—	—
S	United Gas Improv.	29	1.40	4.8	2.11m	2.03	4	13.7	66
S	Wash. Gas Light	25	1.50	6.0	2.87m	1.73	66	8.7	52
	Average			5.6%				11.9	

RECENT FINANCIAL DATA ON TELEPHONE, TRANSIT, AND WATER COMPANIES

		6/27/51 Price About	Indicated Dividend Rate	Approx. Yield	Share Earnings#: Cur. Period	Prev. Period	% Increase	Price-Earnings Ratio	Div. Payout
Communications Companies									
	Bell System								
S	Amer. Tel. & Tel.	153	$9.00	5.9%	$11.97d	$8.03	49%	11.3	75
O	Cinn. & Sub. Bell Tel.	72	4.50	6.3	4.59d	4.79	D4	15.7	98
C	Mountain Sts. T. & T.	99	6.00	6.1	7.32m	5.55	32	13.5	82
C	New England Tel.	108	8.00	7.4	11.62m	8.50	37	9.3	69
S	Pacific Tel. & Tel.	107	7.00	6.5	8.43d	4.84	74	12.7	83
O	So. New Eng. Tel.	33	1.80	5.5	2.12d	1.79	18	15.6	85
	Averages			6.3%				13.0	
	Independents								
O	Central Telephone	10	$ .80	8.0%	$1.28m	$1.06	21%	7.8	63
S	General Telephone	28	2.00	7.1	2.81my	1.51	86	10.0	71
C	Peninsular Tel.	40	2.50	6.3	3.86m	3.97	D3	10.4	65
O	Rochester Tel.	12	.80	6.7	1.52d	.90	69	7.9	53
Transit Companies									
O	Chicago SS. & S. B.	10	$1.00	10.0%	$1.67d	$ .91	84%	6.0	60
O	Chicago No. Sh. & Mlke.	4	—	—	.46d	NC	—	8.7	—
O	Cinn. St. Ry.	5	.30	6.0	.19d	.84	D77	—	158
O	Dallas Ry. & Term.	11	1.40	12.7	1.76d	1.39	27	6.3	80
S	Greyhound Corp.	11	1.00	9.1	1.24m	1.20	3	8.9	81
O	Kansas City P. S.	2	—	—	—	—	—	—	—
O	Los Angeles Transit	6	.50	8.3	.51d	.84	D39	11.8	98
S	Nat. City Lines	10	1.00	10.0	1.90d	1.75	9	5.3	53
O	Phila. Transit	6	—	—	—	—	—	—	—
O	Rochester Transit	5	—	—	.13d	NC	—	—	—
O	St. Louis P. S. A	9	.50	5.6	.41d	.48	D15	—	122
O	Syracuse Transit	21	2.00	9.5	2.89d	.62	366	7.3	69
O	United Transit	3	—	—	.68d	.55	24	4.4	—
	Averages			8.9%				7.3	
Water Companies									
	Holding Companies								
S	Amer. Water Works	8	$ .50	6.3%	$1.04m	$ .81	28%	7.7	48
O	N. Y. Water Service	28	.80	2.9	2.18m	1.03	112	12.8	37
	Operating Companies								
O	Bridgeport Hydraulic	32	$1.60	5.0%	$1.45d	$1.57	D8%	22.1	110
O	Calif. Water Serv.	27	2.00	7.4	2.35my	2.13	10	11.5	85
O	Elizabethtown Water	99	6.00	6.1	6.96d	8.37	D17	14.2	86
S	Hackensack Water	31	1.70	5.5	2.73d	2.68	2	11.4	62
O	Jamaica Water Supply	22	1.50	6.8	2.56m	1.75	46	8.6	59
O	New Haven Water	54	3.00	5.6	3.25d	3.45	D6	16.6	92
O	Ohio Water Service	20	1.50	7.5	2.10m	1.65	27	9.5	71
O	Phila. & Sub. Water	26	.80	3.1	3.06d	3.49	D12	8.5	26
O	Plainfield Union Wt.	51	3.00	5.9	4.16d	5.09	D18	12.3	72
O	San Jose Water	31	2.00	6.5	2.86a	2.68	7	10.8	70
O	Scranton-Spring Brook	13	.90	7.0	1.12d	.85	32	11.6	80
O	Southern Cal. Water	8	.65	8.1	.83m	.77	8	9.6	78
O	Stamford Water	55	2.00	3.6	2.10d	2.35	D11	26.2	95
O	West Va. Wt. Service	18	1.20	6.7	1.31d	1.29	2	13.7	92
	Averages			6.1%				13.3	

D—Deficit. C—Curb exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange. *Based on average number of shares outstanding. # In order to facilitate comparisons, earnings are calculated on present number of shares outstanding, except as otherwise indicated. ju—July, 1950. d—December, 1950. m—March, 1951. a—April. my-May. NC—Not comparable.

What Others Think

Controls *versus* Production

THERE has always been a casual relationship between new ideas in business production and the law. Every new invention leaves in its trail a wide wake of regulatory law, property law, taxation, labor, and other adjustment of law to the new economic adventure. That is all very fine as long as law stays behind the idea, and brings up the rear, so to speak. But when regulatory or other law gets out ahead of production, then we are in danger of constrictive controls, or economic strangulation.

Such was the general thesis of a thought-provoking address recently given to the alumni of the University of Pittsburgh Law School by Roger M. Blough, who can certainly speak from the standpoint of production. He is vice president of the United States Steel Company. Discussing the correlation between law and new ideas in business production, he stated:

> You can readily appreciate what I mean when you recall that the ideas for television brought current rulings—for the moment the law of the land—governing how television may be operated. The first jet propulsion automobile which roars down the new boulevards of this city will be accompanied by a new rule or regulation we call a law—and, if not the first, the second will be. And that law will be followed by more laws and more controls when the first atomic energy car comes along.

The speaker then stressed the need for voluntary action to insure an uninterrupted flow of American ideas. "If you accept that as a premise," Blough stated, "it follows that anything which enhances and preserves the freedom of choice is on the plus side, and anything which diminishes it is on the minus side." Blough further stated that analysis of a new legal concept should determine whether it is headed in the direction of voluntary action or up blind alleys of restraint and frustration. Blough's analysis of the Defense Production Act of 1950 followed:

> Just as each new situation brings on new controls, the new national emergency had to bring its ideas of controls, many of which are now embodied as the policy of the land in the Defense Production Act of 1950.
>
> In enacting that law which, among other things, controls wages and prices, with some notable exceptions, the duly constituted policy makers for the nation carved out an area for further policy making by the law's administrators.
>
> And these administrators have developed an idea regarding corporate earnings which, by administrative ruling, is now national policy and which, in my humble opinion, is bound in future months to cause trouble of a serious nature for wage earners and investors alike.
>
> This idea, which saw the light of day several weeks ago—and which is really a reissue of one originally promulgated by the Henderson and Bowles price-control dynasties of a decade ago—is about this: The nearer you can bring American business to the profit starvation point in a period of national emergency, the more effective will be the nation's production effort and its production results.

BLOUGH conceded that authors of the idea did not describe it in such frank terms. A more acceptable looking cloak

had been used. For the future, they say, a fair and equitable price for an industry amounts to 85 per cent of the average of the dollar profits of the industry in the three best years during 1946-1949—with the so-called profits figured before Federal taxes and after disallowance of special depreciation on new high-cost facilities built during the emergency under certificates of necessity, which the tax branch of the government allows as a cost for tax purposes. If this idea is adhered to, Blough said, it could mean roughly "a reduction of more than 50 per cent in the 1950 rate of earnings in dollars for the steel industry—in the earnings available for dividends to stockholders." And that is without regard to any erosion since the late 1940's in the value of the dollar.

THE steel spokesman then turned to the price-control record of World War II. He recalled that the five years of high operating rates and wage controls put the steel industry in a position 50 per cent worse than it was at lower operating rates immediately prior to 1942, when earnings in terms of dollars had *not* dropped 50 per cent. Blough added that during the same period the purchasing value of the dollar, in terms of what steel companies bought, dropped about 30 per cent, meaning that real earnings in 1945 were about 35 per cent of 1941. He went on:

> Why was this true? The basic answer lay not in the ideas adopted by Congress but in the administration of those ideas—in the policies adopted by the administrators of price controls. The figures I have given you are necessarily approximations. I invite you to check them for yourself. You may vary them several points here or there, but you will not change the essential truth of the assertion that during price and wage controls in the last war our profits as an industry were put through the wringer and squeezed dry. And if you will look at the production records for 1945 and 1946, you will see that production also suffered.

BLOUGH stated it would take an expert prophet to predict with assurance what will happen under the present set of wage and price ideas as they ripen into current control policies. He warned that there is little evidence anywhere to indicate a degree of stability in wage cost increases, but that present conditions point to a climb in production costs. In that event, he said, it will be the same old story:

> . . . The story of competition between ideas. Should an industry make a reasonable profit, when so much in the way of new facilities, new development, and greater production depends upon that profit, both in the hands of the company which earns it and in the hands of the investors of the land who must furnish the sinews of our industrial might? Or are we going to repeat in our land the sorry tale of industrial decadence brought about by slow starvation from a lack of the only food upon which a profit economy can survive—a profit?
>
> You have heard a lot about a cost-of-living increase. How often have you heard about a cost-of-business-living increase?

The speaker claimed that public interest, not special pleading, has his real concern. He professed his faith in "our basic idea of voluntary action." He said we are faced by a "competition between the two ideas"—a profitless economy on the one hand, and an economy with the driving force of a profit on the other. There is no room to question which will bring out the greater production. Resolution of this conflict of ideas in the interest of greater production is important in short periods of imminent national danger, but it is even more vital in our emergencies of long duration.

BLOUGH stated that a plea for profit and production incentives is not a plea for "business as usual." The steel executive observed that it does not imply a lack of patriotism on the part of management and investors, and that plant workers will work to an even greater de-

gree on incentives during times of emergency.

Blough ended on a note of challenge. He called for a "production point of view."

"Take time out when a new idea for control comes along," the steel spokesman suggested, "and test it for yourself. Does it fit a real need—does it aid production—or will it give business another case of Potomac ptomaine?" Blough repeated the need for voluntary action, adding that an ounce of it is worth a pound of controls.

Jersey's Utility Antistrike Law

PUBLIC support for New Jersey's public utility antistrike act, providing for compulsory arbitration of such labor disputes where other settlement efforts fail, is claimed by Allan Weisenfeld, secretary of the New Jersey State Board of Mediation, in an article appearing in the June issue of *National Municipal Review*, published by the National Municipal League.

Besides reviewing the background of the law and noting that New Jersey "has been virtually free of crippling utility strikes of any size or duration since the statute has been on the books," Weisenfeld declares that there are "important distinctions" between the New Jersey law and a similar Wisconsin act which was invalidated earlier this year by the U. S. Supreme Court.

About a dozen states have public utility antistrike laws of varying types, most of them enacted in 1947, with the aim of preventing disruption of essential utility services by labor disputes. Similar bills were proposed in a number of state legislatures this year, with some still pending, but with the trend toward such measures generally slowed, at least temporarily, by the doubt cast on their validity by the U. S. Supreme Court ruling in the Wisconsin Case.

IN commenting on the New Jersey statute, Weisenfeld writes as follows:

> New Jersey was among the first of the states to come to grips with the problem of utility labor disputes. In April, 1946, the legislature enacted a statute providing for gubernatorial seizure of struck utility plants if a strike deleteriously affects the health and welfare of the citizens. Provision was made for public hearing of the issues in dispute following seizure.
>
> During its first year the legislation was not uniformly successful. On the eve of the national telephone strike in April, 1947, the law was amended to provide for compulsory arbitration.
>
> Subsequently the act received two major tests in the state courts. As an outgrowth of the telephone strike, a declaratory judgment as to constitutionality was sought by the attorney general. The New Jersey Supreme Court supported the motives of the statute but held the act unconstitutional for lack of "standards" to guide arbitrators. This defect was promptly remedied. The legislature amended the statute by incorporating such standards.
>
> The second major legal test also involved the telephone industry. The New Jersey Bell Telephone Company attacked an arbitration award under the amended act, contending that the law was unconstitutional, the standards too vague, and the award not in conformance with the statute. In the fall of 1950, the state supreme court sustained the statute, holding that the standards were clear and unambiguous, but sent the award back to the board of arbitration because, in its judgment, the board failed properly to apply the standards of evidence. For all practical purposes the court was substituting its judgment for that of the arbitrators.
>
> Labor's reaction was immediate. The decision of the court was de-

nounced as unrealistic. Thus far, however, there has been no further legal jousting with the statute. The telephone dispute was settled by mediation directly after the supreme court decision.

Attacks were renewed recently when the United States Supreme Court recently held a Wisconsin statute, which similarly compelled the arbitration of disputes affecting public utilities, to be unconstitutional. There are, however, important distinctions between the two statutes. The Wisconsin law is all-embracing. Under it all disputes involving public utilities which could not otherwise be settled had to be submitted to arbitration. In New Jersey before arbitration can be imposed, the governor must find that an emergency exists and seize the plant. The acts of finding the existence of an emergency and seizing the utility property converts, at least technically, private employees into public employees.

The people of New Jersey believe that their statute has served the purposes for which it was established. Even those opposed to the law do not assert that workers have been denied economic justice under it. Those in favor merely point to the fact that New Jersey has been virtually free of crippling utility strikes of any size or duration since the statute has been on the books. This, they feel, is complete justification of their position.

IN his article, entitled "Home Rule in Labor Peace," Weisenfeld comprehensively reviews the rôle of the states in providing mediation facilities to aid in the settlement of all types of labor disputes. Thirty-seven states and territories have authorities which promote the voluntary mediation and conciliation of labor disputes, he notes, with special authorities or boards for mediation established in 11 states.

"Public approach to the problem of industrial disputes," Weisenfeld says, "has undergone a complete cycle in the last fifty years. The states which first recognized the need for a 'home rule' approach to the problem left the task to the Federal government for most of the first half of the century. During the dismal thirties many industrial municipalities—Toledo, Newark, New York city, Louisville, Elizabeth—sought to curb industrial unrest through the medium of local mediation boards.

"The states reawakened to their responsibilities in the years preceding the war. The impact of rising prices, and the labor disturbances which followed in their wake, made them recognize that, on a municipal basis, machinery was inadequate and, on a national basis, too far removed from the scene. The states have accepted their responsibilities and developed successfully functioning mediation facilities."

During its almost ten years of existence, Weisenfeld declares, the New Jersey Board of Mediation "has settled over 3,500 disputes by mediation. Nine hundred were strike situations. The remainder were potential strikes which presumably were avoided because the services of the board were available and the parties had the will, through the medium of the board, to find the answers to their problems."

Bills by the Bushel

"THERE comes to our desk the results of a survey, the first question of which is as follows:

"'Who, in your opinion, is to blame for the delays in passing new legislation in Washington?'

"This assumption that there should be more and speedier legislation we find a little startling and if we had time we would conduct a survey of our own. The question would be this:

"'Who is to blame for the legislation passed in Washington?'"

—EDITORIAL STATEMENT,
The Wall Street Journal.

The March of Events

In General

Atomic Energy Seen Source Of Power

THE prospects of nuclear energy becoming "within the next decades" an important new source of electric power was conceded to be growing by the Ad Hoc Advisory Committee on co-operation between the electric power industry and the Atomic Energy Commission.

The committee reported that no valid judgments could as yet be made as to whether and on what scale nuclear reactors will ultimately contribute to the nation's energy resources, but added: "Nevertheless, our own observations, reinforced by recent pronouncements of the AEC, convince us that the prospects of an important new source of power within the next decades are robust enough to warrant a strong present and continuing interest on the part of the electric power industry."

The report, submitted recently by Gordon Dean, chairman of the Atomic Energy Commission, was signed by E. W. Morehouse, president of General Electric Public Utilities Corporation; Philip Sporn, president of the American Gas & Electric Company; and Walton Seymour, adviser on power problems to the Economic Co-operation Administration.

TVA to Increase Rates

THE Tennessee Valley Authority is reducing its quantity discount practices for big industrial customers because of increased costs in construction and operation resulting from national defense requirements.

To accomplish this, the TVA is raising its rates on an average of 12 to 15 per cent for big industries as compared with the schedule that has existed over a 15-year period. The rate increase is not an abrupt change, but represents a gradual transition which has undergone a marked step-up because of recent emergency developments, according to TVA officials.

Meanwhile, there was said to be no plan at present to increase rates to TVA's 1,154,000 residential and farm-owner users, commercial and small industrial customers, who buy power at retail through independent municipal and co-operative distributors.

"We are following what we believe is a sound business practice accepted by anyone who sells a product," a TVA spokesman declared.

Alabama

Senate Passes New REA Phone Bill

THE state senate late last month, in winding up the first half of the 1951 session, passed without a dissenting vote a new rural telephone bill which aims at tying in with a national act permitting the REA to make loans for rural telephone co-operatives.

As worked out by representatives of

telephone companies and the REA, the bill provides that co-ops can come in rural areas and municipalities of up to 1,500 population. There is a provision, however, that they cannot duplicate existing telephone facilities, but are allowed to make agreements for connections with established telephone systems.

Illinois

Bills in State Legislature

THE state house last month rejected a measure which would have forced the Chicago Transit Authority to hold public hearings on rate increases, service changes, and property purchases.

The measure, which received only 33 votes, with 77 the constitutional majority required, also would have subjected to judicial review the CTA's decisions on rates and property.

The state senate recently passed a house bill which permits utilities to mortgage both real and personal property. It also passed a bill which closes the gap between state and Federal regulation of pipeline companies.

Final legislative approval was given by the senate to a series of bills designed to force local governments to buy Illinois-mined coal. Sponsored by the United Mine Workers Union, the bills sent to Governor Stevenson late last month would require the purchase of Illinois coal if the cost is not 10 per cent more than for coal from other states.

The bills, passed 34 to 5, were said to put the governor on a spot. Approval of the bills would mean that cities and other governmental units would pay more for coal. Vetoes would alienate coal miners already unhappy because the governor permitted a natural gas underground storage bill to become law without his signature.

Nebraska

City Gets Power Report

THE city of Holdrege can save $860,462 in eleven years by generating its own electricity, an engineering-economic report submitted to the city council recently shows.

The city now buys its electricity from the Nebraska Public Power System.

The power question has been a bone of contention for the past two years, since the Nebraska Public Power System served notice it was canceling its contract, with a revision of rates. Since that time, both the NPPS and the city have offered plans for compromise on a purchase agreement, but basic differences remained unsolved.

New Jersey

Governor Vetoes Rate-fixing Bill

GOVERNOR Driscoll last month vetoed a bill which would have enabled the state board of public utility commissioners to fix rates for bus operators on the basis of an operating ratio, which would guarantee them a clear profit of from 5 to 10 per cent after operating deductions. The rejected measure was a committee substitute for a bill sponsored by Assemblyman Shershin, Passaic county Republican.

An opinion handed down by the state supreme court, in a case involving fares of Public Service Company busses, held that bus operators must establish a rate base.

Assemblyman Shershin's objective was to provide an alternative method for the small companies that do not have sufficient investment to enable them

to establish a base. However, in its final form, the committee substitute did not exempt Public Service, and there was said to be a possibility that the large utility firm could qualify for an income based on operating ratio.

Ohio

Coal Pipelines "Utilities"

GOVERNOR Lausche last month signed a bill granting public utility status to pipelines for transportation of coal. The measure becomes effective on August 25th.

The pipelines will carry pulverized coal mixed with water. At terminals the coal will be dried and sold in its pulverized state to industry or in pressed brick form for domestic heating use.

The Hanna Coal Company of Cleveland already has a pilot line under construction at Cadiz, in eastern Ohio.

The new law's sponsor, State Senator Rolf, said the pipeline transportation method will put coal in a better competitive position with other fuels—gas and oil—which also are distributed by pipeline.

Pennsylvania

Industrial Gas Rate Boosted

THE state public utility commission recently authorized the Peoples Natural Gas Company, Pittsburgh, to make an estimated $1,021,000 annual rate increase, effective July 1st, for 142 large-quantity industrial consumers in western Pennsylvania.

The new tariff does not affect residential or commercial rates.

The commission took no action to suspend the rate on the ground that a study showed it would not produce an excessive return. Commissioner Conly, Pittsburgh, voted against the increase.

The heavy use or industrial rate will be increased three cents per thousand cubic feet for all consumption in excess of 500,000 cubic feet monthly.

The utility, which furnishes service in Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Clarion, Fayette, Greene, Indiana, Lawrence, Washington, and Westmoreland counties, has 201,000 residential and 11,800 commercial users.

The company said it has expanded its facilities to meet a "tremendous" increase in industrial demand.

Wisconsin

Higher Rates Sought

THE Madison Gas & Electric Company recently asked the state public service commission for a $143,600-a-year increase in electric rates, and offered a $120,100 cut in gas service rates when and if the electric rates are boosted.

In his application, the company's president pointed out that the utility has had no rate increases "since the origin of regulation" in Wisconsin, and had cut electric rates as recently as August, 1946.

The company is asking that the 1946 reduction—from 2 to 1.8 cents per kilowatt on the first block, for residential users—be wiped out, and that rates be increased on off-peak water heating, 3-phase power customers, and other large users.

The proposed rate changes would affect 29,000 electric customers and 21,000 natural gas users.

Progress of Regulation

Excess over Original Cost Excluded from Rate Base

THE West Virginia commission disapproved a proposed rate increase for a telephone company but did authorize the company to file a new tariff providing for an increase of 5 per cent in its flat rate monthly charges on all telephone stations, including extension telephones. In doing so, the commission said that any return in excess of 6 per cent was ample to warrant the construction program necessary for the company to discharge the duty imposed upon it by law to render to the public of West Virginia the telephone service to which it was entitled.

The company proposed to include in its rate base the amount of its acquisition adjustment account. It was shown that more than thirty years ago the company purchased certain properties at more than their estimated original cost and that the entire purchase price had been added to the plant accounts. As these properties were retired only their estimated original cost had been deducted from the plant accounts. The commission held that this excess should not be included in the company's rate base since it never did represent any part of the original cost of plant and had no relation whatsoever to any part of the present plant.

The commission also rejected the company's proposal to include in its rate base the average amount of construction work in progress. It pointed out that the company accrues interest on construction work in progress and that when the construction is completed and placed in service this accrued interest is included as part of the original cost, along with materials and labor costs. The company then earns upon this amount during the service life of the property and finally as it is retired recovers the interest as well as the other original cost out of depreciation reserves. This has been the accounting practice of utilities generally for many years.

The commission observed that it is fair to the utility and places the burden of the investment upon those ratepayers who receive the use of the new plant after it is placed in service rather than upon those who derive no benefit from it while it is being constructed. For these reasons it concluded that the amount of the construction work in progress should not be included in the company's rate base. Inclusion in the rate base of the amount of materials and supplies on hand but not yet paid for was disallowed. These materials and supplies are purchased from or through the Western Electric Company, a Bell system affiliate, and are not paid for on the average until about forty-five days after their purchase. This privilege of delaying payment is one of the moving considerations provided in the terms of the contract between the operating company and Western. Within that delayed payment period more than half of the materials and supplies purchased are transferred either to construction work in progress or to plant in service.

Upon their transfer they earn interest during the period of construction. When transferred to plant in service they become a part of the regular plant accounts.

Because of this situation it was not considered equitable to permit the company to earn upon the cost of materials and supplies purchased under its contract with the affiliate unless they have actually been paid for or put into use. Therefore, the commission excluded them from the rate base. *Re The Chesapeake & Potomac Teleph. Co. of West Virginia, Case No. 3592, May 2, 1951.*

Avoidance of Dual Regulation Is Basis for Utility Merger

THE New York commission approved the merger of two subsidiary gas and electric companies serving contiguous areas into the parent corporation on the ground that it would eliminate the question as to whether the delivery of natural or mixed gas by the parent to the subsidiary might be used as a basis to support the claimed jurisdiction over the parent company by the Federal Power Commission.

It was pointed out that after hearings as to conditions under which natural gas was to be supplied to the parent company and other utility companies in the metropolitan New York area, the Federal Power Commission had held that the company was subject to its jurisdiction under the Natural Gas Act. The New York commission observed that such determination was not necessarily final since a rehearing had been granted and review by the courts probably would be sought. It said that while the record in the proceeding was not entirely clear as to the jurisdictional situation in the event of a merger, it was obvious that the emergence of a single company would do away with the present intercompany sales and transfers and, presumably, minimize the basis for a jurisdictional claim on the part of the Federal Power Commission.

Duplicate regulation of any public utility, irrespective of the desire of various commissions to serve the public interest, could result, according to the New York commission, in division of power and responsibility. It said that good regulation of public utilities requires that one body must assume the responsibility and that no matter how earnest various commissions may be in their desires to protect the public, divided responsibility frequently leads to tragic results.

The commission pointed out that it has a responsibility to protect the people of New York and that the most important and fundamental question to be decided in this proceeding, and the one to which all others were subordinate, was whether the proposed merger was in the public interest. Any proposed action which would help to maintain state regulatory authority over wholly intrastate utility activities was manifestly in the public interest.

Savings would result from the merger by virtue of the elimination of various taxes which would have to be paid on all dividends received by the parent company from the two subsidiaries if the latter were to continue as individual companies. Elimination of a 2 per cent penalty rate on filing consolidated income tax returns would also result. Savings due to the elimination of double billing of commercial expenses and duplicate administrative and general expenses would be additional beneficial results of the merger. *Re Consolidated Edison Co. of New York, Inc. Case 14916, Feb. 14, 1951.*

"Denied-toll Arrangement" for Telephone Service Refused

THE Wisconsin commission refused to require a telephone company to install a control system to prevent long-distance calls from being placed over telephones at a fraternity house. The telephone company viewed the request as one for a specialized service which could be provided only at excessive cost, would

not be feasible, and would be discriminatory unless it were available to all subscribers. It believed that it should be the responsibility of subscribers to police toll calls and that the installation of coin boxes would solve the problem.

The commission found that to eliminate the placing of long-distance calls over the fraternity telephones would require the installation of two special toll diverting circuits, a first selector framework, and two first selectors at the dial central office. This would necessitate the identification of denied-toll trunks on at least two positions of the toll switchboard and the training of over two hundred toll operators, all of whom would be subject to assignment at various positions of the switchboard, in the special treatment of long-distance calls placed over the affected trunks.

To avoid unlawful discrimination, any special service provided the fraternity would have to be made available to subscribers generally, and the cost and engineering problems would be greatly increased. There was no general need for this type of service.

The commission believed that a reasonable and feasible method of eliminating unauthorized long-distance calls would be the use of coin-box telephones, which are available to the fraternity house and which are used by other subscribers to meet similar problems. Consequently, the commission concluded that the requested "denied-toll arrangement" was not required to provide reasonably adequate telephone service to the fraternity house. *Phi Delta Theta House Asso. v. Wisconsin Teleph. Co. 2-U-3516, April 12, 1951.*

Wide Variations in Customer Demand Require 2-part Rate

THE Missouri commission dismissed the complaint of twenty-five industrial users of natural gas against a demand charge. None of the evidence submitted by the consumers convinced the commission that an optional rate which included the demand charge was unfair or unreasonable.

The customers were furnished gas under two distinctly different classifications, one for process work continuing somewhat uniformly throughout the year, the other for space heating varying according to seasonal temperatures. If all the industrial companies used gas uniformly throughout the year as for process work, the commission said, a block type rate could be established which would distribute the costs fairly among them. But for service such as the companies were receiving with wide variations in use a block type rate would not be practical. The commission said:

> If the blocks are made large to apply to the large customers the smaller customers cannot purchase gas at the lower steps. If the schedule is designed with small blocks so the smaller customers can take gas at the lower steps, the large customer gets a larger per cent of gas at the lower steps. The only way to design a rate schedule to meet such wide variations in the size of the customer load and the variations in the take of the gas is to apply a so-called 2-part or demand plus a commodity type rate.

The commission further pointed out that a demand charge covers the costs of that part of the utility's distribution system set aside for the customer's use. The large customer properly pays more for a larger capacity set for him than the small customer. If the company were required to eliminate the demand charge, a higher commodity charge would have to be allowed. This would increase the cost to customers who take gas uniformly through the year and reduce it for the space-heating customers.

The commission found further justification for the demand charge in the fact that the utility purchased gas from its supplier under a demand-plus-commodity rate. Comparisons offered in evidence between the schedule in question and rate schedules of other gas companies were not considered of any value inas-

much as no showing was made as to the form of rates under which gas was purchased from the supplier or the cost of the gas purchased. *American Fixture & Mfg. Co. v. Laclede Gas Light Co. Case No. 11,750, April 17, 1951.*

Proof of Financial Feasibility of Pipeline Project Required

THE Federal Power Commission reopened a proceeding relating to an application for authority to construct and operate a natural gas pipeline to serve parts of Alabama, Georgia, Florida, and South Carolina. It was deemed to be in the public interest to reopen the proceeding to permit the company to introduce further evidence of its ability to finance and construct the proposed facilities and to show that the project would be economically feasible.

The pipeline was proposed to serve 53 communities and 22 direct industrial customers. Only 11 of the communities have distribution systems and some of these would have to be changed and expanded with the introduction of natural gas. These resale customers would serve domestic, commercial, and industrial customers. All of the gas was proposed to be sold on a firm basis.

The company frankly admitted that it had no contracts or firm commitments from any of its prospective customers for the sale of any of the gas. It was recognized that before the project could be financed or started it would be necessary for the company to have 90 per cent of the direct industrial business and 75 per cent of the resale industrial business, volumewise or dollarwise, under firm commitment for at least a 10-year period.

The commission admitted that there was a market for the natural gas. It said, however, that no matter how much natural gas is desired and needed in a certain area, it is futile to authorize the service if the company is not able and willing to render it adequately. The issuance of a certificate would not necessarily assure the company's ability to finance or construct the project. *Re Atlantic Gulf Gas Co. Opinion No. 207, Docket No. G-887, Feb. 28, 1951.*

Other Important Rulings

THE supreme court of Colorado held that the fact that a municipality, which had acquired properties of a water company for the sole purpose of supplying water for its inhabitants, sold such water as was not needed by it for immediate use in its proprietary capacity to an adjoining municipality did not subject the municipality to the jurisdiction of the commission. *Englewood v. Denver, 229 P2d 667.*

The court of appeals of Kentucky held that the Division of Motor Transportation had authority to grant a certificate to a competing motor carrier where public convenience and necessity so require and where the existing carrier had notice that its service was inadequate and it consistently failed for longer than a reasonable time to improve such service. *Greyhound Corp., Inc. et al. v. Steele, 237 SW2d 833.*

The United States District Court held that an agreement to furnish water, whether written or oral, and subsequently ratified, is terminable at will where there is no proof of its duration, and that rates fixed upon such lawful termination are valid since the power to fix rates for water exists by necessary implication. *Seldovia Pub. Utilities Dist. v. Cook Inlet Packing Co. 95 F Supp 528.*

The supreme court of Tennessee held that the commission has no alternative

other than to authorize discontinuance of train service where the carrier brings itself within the provisions of the act providing that the commission shall authorize discontinuance of any passenger train when it shall be made to appear that for a period of twelve months or more the direct operating costs of such train have exceeded the aggregate gross revenues therefrom by more than 30 per cent. *Louisville & N. R. Co. v. Hammer, 236 SW2d 971.*

The Pennsylvania commission, in authorizing a water rate increase, estimated annual depreciation by spreading over the estimated remaining life of the company's property, on the 4 per cent compound interest basis, only those estimated dollars of original cost not previously accumulated in the recorded depreciation reserve. *Pennsylvania Pub. Utility Commission et al. v. Mount Carmel Water Co. Complaint Docket Nos. 15009, 15018, March 20, 1951.*

The supreme court of Wisconsin held that the commission must approve an acquisition of motor carrier operative rights if such acquisition is not against public interest and no new operating right is created. Where, upon such acquisition, a motor carrier proposes a single-line through service an amended certificate is needed. *Clintonville Transfer Line v. Public Service Commission, 46 NW2d 741.*

The supreme court of Utah held that the reinstatement of a contract carrier did not authorize it to transport goods where the parties to the contract had been changed. *Wycoff Co. v. Public Service Commission, 227 P2d 323.*

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(FRANKFURTER, BLACK, REED, and DOUGLAS, JJ., dissent.)

APPEARANCES: William D. Mitchell, of Washington, D. C., argued the cause for petitioner; Jacob M. Lashly, of St. Louis, Missouri, argued the cause for respondent; Howard E. Wahrenbrock, of Washington, D. C., for Federal Power Commission, amicus curiae, by special leave of court.

Mr. Justice JACKSON delivered the opinion of the court: Petitioner and respondent are public electric utilities companies engaged in interstate commerce. Petitioner's predecessor and respondent were under the same management through interlocking directorships and joint officers. During that relationship the two interchanged electric energy, shared expenses, and made a number of intercompany contracts establishing rates and charges, which contracts were filed with and accepted by the Commission. These contract rates and charges are at the root of this controversy. Petitioner charges that during the period 1935–1945, its predecessor paid respondent unreasonably high prices for what respondent furnished it, and that it received unreasonably low rates for what it provided respondent. That advantage, it is alleged, was fraudulent and unlawful and was due to the interlocking directorate, which prevented protest to the Commission to have reasonable rates and charges established pursuant to the provisions of the Federal Power Act.[1]

Petitioner sued in United States district court and asserted jurisdiction on the ground that the case "arises under the Constitution or laws of the United States"[2] and, more particularly, under a "law regulating commerce,"[3] specifically the Federal Power Act.

Petitioner was successful in the district court, which found the contracts void for fraud and the rates and charges established therein unreasonable. The court also determined what would have been reasonable rates and charges for the period in question and gave judgment for the difference between its conception of reasonable charges and the actual charges, amounting to over three-quarters of a million dollars.[4]

The judgment was reversed by the court of appeals for the eighth circuit on the ground that the district court was without jurisdiction.[5]

[1, 2] As frequently happens where jurisdiction depends on subject matter, the question whether jurisdiction exists has been confused with the question whether the complaint states a cause of action. The Judicial Code, in vesting jurisdiction in the district courts, does not create causes of action, but only confers jurisdiction to adjudicate those arising from other sources which satisfy its limiting provisions. Petitioner asserted a cause of action under the Power Act. To determine whether that claim is well founded, the district court must take jurisdiction, whether its ultimate resolution is to be in the affirmative or the negative. If the complaint raises a Federal question, the mere claim confers power to decide that it has no merit, as well as to decide that it has. In the words of Mr. Justice Holmes, ". . . if the plaintiff really makes a substantial claim under an act of Congress there is jurisdiction whether the claim ultimately be held good or bad." The Fair v. Kohler Die & Specialty Co. (1913) 228 US 22, 25, 57 L ed 716, 718, 33 S Ct 410. See also Hurn v. Oursler (1933) 289 US 238, 240, 77 L ed 1148, 1150, 53 S Ct 586. Even

[1] [June 10, 1920] 41 Stat 1063, Chap 285, [Aug 26, 1935] 49 Stat 803, 838, Chap 687, [May 28, 1948] 62 Stat 275, Chap 351, 16 USCA §§ 791a–825r.

[2] 28 USCA § 1331.

[3] 28 USCA § 1337.

[4] Not reported.

[5] (1950) 83 PUR NS 33, 181 F2d 19.

a patently frivolous complaint might be sufficient to confer power to make a final decision that it is of that nature, binding as res judicata on the parties.

Petitioner's complaint, in substance, alleges existence of the interlocking directorship, contends that such relationship was used fraudulently to deprive it of its federally conferred right to reasonable rates and charges, and demands reparations. We think there was power in the district court to decide whether the claims so grounded constitute a cause of action maintainable in Federal court and, if so, whether it is sustained on the facts. We think a direction to dismiss for want of jurisdiction was error and that it should not stand as a precedent.

However, it is clear that the reason underlying the court of appeals' decision was that no Federal cause of action was established. If this was correct, we should sustain the judgment of reversal, though on other grounds than those stated.

The petitioner's problem is to avoid Scylla without being drawn into Charybdis. If its cause of action arises from fraud and deceit, it is a common-law action of which a Federal court has no jurisdiction, there being no diversity in citizenship of these parties. But if it arises from being charged rates in excess of those permitted by the Power Act, it is confronted with the exclusive powers of the Commission to determine what those rates are to be. Hence, it is necessary to bring the case into court, not as a fraud action, but as one to enforce the Power Act, using the allegations of fraud to escape the limitations of the Power Commission remedies.

I

[3] Petitioner identifies as the source of its cause of action the Federal Power Act's requirement of reasonable electric utility rates,[6] which, it contends, creates its legal right to rates which a court may deem reasonable, even if different from those accepted by the Federal Power Commission. It is admitted, however, that a utility could not institute a suit in a Federal court to recover a portion of past rates which it simply alleges were unreasonable. It would be out of court for failure to exhaust administrative remedies, for, at any time in the past, it could have applied for and secured a review and, perhaps, a reduction of the rates by the Commission.[7]

Petitioner gives its case a different cast by alleging that by fraudulent abuse of the interlocking relationship its predecessor was deprived of its independence and power to resort to its administrative remedy.

But the problem is whether it is open to the courts to determine what the reasonable rates during the past should have been. The petitioner, in contending that they are so empowered, and the district court, in undertaking to exercise that power, both regard reasonableness as a justiciable legal right rather than a criterion for

[6] Section 205(a) of the act, 49 Stat 851, Chap 687, 16 USCA § 824d(a) states that: "All rates and charges . . . and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful."

[7] Section 206(a), 49 Stat 852, Chap 687, 16 USCA § 824e(a).

administrative application in determining a lawful rate. Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint. It allows a substantial spread between what is unreasonable because too low and what is unreasonable because too high. To reduce the abstract concept of reasonableness to concrete expression in dollars and cents is the function of the Commission. It is not the disembodied "reasonableness" but that standard when embodied in a rate which the Commission accepts or determines that governs the rights of buyer and seller. A court may think a different level more reasonable. But the prescription of the statute is a standard for the Commission to apply and, independently of Commission action, creates no right which courts may enforce.

Petitioner cannot separate what Congress has joined together. It cannot litigate in a judicial forum its general right to a reasonable rate, ignoring the qualification that it shall be made specific only by exercise of the Commission's judgment, in which there is some considerable element of discretion. It can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms.

We hold that the right to a reasonable rate is the right to the rate which the Commission files or fixes, and that, except for review of the Commission's orders, the courts can assume no right to a different one on the ground that, in its opinion, it is the only or the more reasonable.

II

[4] The petitioner here contends that its case is different by reason of its allegations of fraud. Those, the evidence that supports them, and the findings are exceedingly general, and it is not entirely clear whether, in addition to the claim that constructive fraud may be inferred from the intercorporate relationship, specific acts of deceit are found. Nor does it appear to have been thought that the difference between constructive and actual fraud mattered.

If the petitioner's grievance arises from active fraud and deceit, it gains nothing from the Federal Act. Such an action would have been maintainable if no Federal Power Act had been enacted. Before the act, petitioner would have had no statutory right to a reasonable rate, but it did have a common-law right not to be defrauded into paying an excessive or unreasonable one. The Federal Act adds nothing to fraud as an actionable wrong, and, therefore, to find a cause of action of this character would only be to dismiss it for want of diversity.

But petitioner's case appears to have rested more heavily and perhaps entirely on constructive fraud presumed from the intercorporate relationship. The act vests in the Commission power to authorize an interlocking directorate, which otherwise is prohibited, "upon due showing . . . that neither public nor private interests will be adversely affected thereby."[8] The relationship here concerned had received Commission approval. The effect of the approval is to exempt the relationship from the ban of the act

[8] § 305, 49 Stat 856, Chap 687, 16 USCA § 825d(b).

and remove from it any presumption of fraud that might be thought to arise from its mere existence. It would be a strange contradiction between judicial and administrative policies if a relationship which the Commission has declared will not adversely affect public or private interests was regarded by courts as enough to create a presumption of fraud. Perhaps, in the absence of the Commission's approval, such relationship would be sufficient to raise the presumption under state law, but it cannot do so where the Federal supervising authority has expressly approved the arrangement.

We need not decide what action the Commission is empowered to take if it believes that a fraud has been committed on itself, for it has taken no action which gives rise to or affects this controversy.

III

[5] The entire court is agreed that the judgment rendered by the district court cannot stand and all agree that it cannot adjudicate the issues that plaintiff tendered to it. We disagree only as to the consequence of the disability. The majority believe the Federal court should dismiss the complaint. A minority urges that we should direct the district court to refer issues to the Federal Power Commission.

It is true that in some cases the court has directed lower Federal courts to stay their hands pending reference to an administrative body of a subsidiary question. Smith v. Hoboken R. Warehouse & S. S. Connecting Co. (1946) 328 US 123, 90 L ed 1123, 64 PUR NS 422, 66 S Ct 947, 168 ALR 497; Thompson v. Texas Mexican R. Co. (1946) 328 US 134, 90 L ed 1132, 66 S Ct 937; General American Tank Car Corp. v. El Dorado Terminal Co. (1940) 308 US 422, 84 L ed 361, 60 S Ct 325. But in all those cases the plaintiff below concededly stated a federally cognizable cause of action, to which the referred issue was subsidiary. In no instance have we directed a court to retain a case in which it could not determine a single one of its vital issues. Here the issue of reasonableness of the charges is not one clearly severable from the issues of liability, for the acts charged do not amount to fraud unless there has been an unreasonable charge. Injury is an essential element of remediable fraud. "Deceit and injury must concur." Adams v. Clark (1925) 239 NY 403, 410, 146 NE 642, 644. See also Connelly v. Bartlett (1934) 286 Mass 311, 315, 190 NE 799, 801.

If the court is presented with a case it can decide but some issue is within the competence of an administrative body, in an independent proceeding, to decide, comity and avoidance of conflict as well as other considerations make it proper to refer that issue. But we know of no case where the court has ordered reference of an issue which the administrative body would not itself have jurisdiction to determine in a proceeding for that purpose. The fact that the Congress withheld from the Commission power to grant reparations[9] does not require courts to entertain proceedings they cannot themselves decide in order indirectly to obtain Commission action which Congress did not allow to be taken directly. There is no indication

[9] S Rep No 621, 74th Cong 1st Sess 20.

in the Power Act that that was Congress' intent.

It is urged that this leaves petitioner without a remedy under the Power Act. We agree. In that respect, petitioner is no worse off after losing its lawsuit than its customers are if it wins. Unless we are to assume that this company failed to include its buying costs in its selling rates, we must assume that any unreasonable amounts it paid suppliers it collected from consumers. Indeed, this is the assumption made by the Commission in its brief as amicus curiae here.[10] It is admitted that, if it recoups again what it has already recouped from the public, there is no machinery in or out of court by which others who have paid unreasonable charges to it can recover.[11]

Under such circumstances, we conclude that, since the case involves only issues which a Federal court cannot decide and can only refer to a body which also would have no independent jurisdiction to decide, it must decline the case forthrightly rather than resort to such improvisation.

The judgment below is affirmed upon the ground that the petitioner has not established a cause of action.

It is so *ordered*.

Mr. Justice FRANKFURTER, joined by Mr. Justice BLACK, Mr. Justice REED, and Mr. Justice DOUGLAS, dissenting: The plaintiff, Montana-Dakota Utilities Company, petitioner here, is the successor in interest to several utility companies which distributed electric energy in North and South Dakota. The defendant, Northwestern Public Service Company, served the region to the south of Montana-Dakota's territory. Both corporations have been subject to the Federal Power Act since its enactment in 1935. 49 Stat 847, Chap 687, 16 USCA §§ 824 et seq. The controversy arises out of relations between the two enterprises prior to 1945. The facts which raise the question whether the Federal district court had jurisdiction to entertain the suit may be briefly summarized.

After January 1, 1935, all but one of Montana-Dakota's directors were directors of Northwestern, and all of Montana-Dakota's officers were officers of the other company. These interlocking arrangements received formal authorization by the Federal Power Commission, as required by § 305(b) of the act, 16 USCA § 825d (b). At different times between 1935 and 1945 contracts were made between the two corporations for the sale of electric energy. All such agreements have to be filed with the Commission, § 205 (c), 16 USCA § 824d (c), but the legality of rates so filed is not conditioned upon the Commission's approval. Unless they are challenged, either by an interested party or on the Commission's initiative, the filed rates become the legal rates. Montana-Dakota now claims, in essence, that for a decade Northwestern, by virtue of its control, deprived Montana-Dakota of the rights which that corporation enjoyed under the Federal Power Act and prevented it from contemporaneously asserting them before the Federal Power Commission. Montana-Dakota was prevented from filing what would have been the lawful rates because Northwestern, as the dominus of Mon-

[10] Brief for the Federal Power Commission as amicus curiae, pp. 13, 14.
[11] Id. pp. 14–17.

tana-Dakota, filed rates for that company that were less than the reasonable rates to be exacted under the Federal Power Act—rates which would have been determined by arm's-length dealing between the two companies. Having secured freedom of action and thereby the power to assert its rights, Montana-Dakota brought this suit in the United States district court for the district of South Dakota to recoup the losses which it claims were thus imposed on it.

The defendant moved to dismiss the complaint for want of jurisdiction in that it failed to state a claim under Federal law. The motion was denied (1947) 71 PUR NS 353, 73 F Supp 149, and the case went to trial. The district court found unfair dealing in the circumstances of the interlocking relationship and resulting unreasonableness in the rates, and gave judgment for the plaintiff in the sum of $779,958.30, principal and interest.

The court of appeals for the eighth circuit reversed. It held that the Federal Power Commission "had jurisdiction and was the proper tribunal in the first instance" to determine the reasonableness of the rates and the bearing of fraud practiced on the Commission in securing permission for the interlocking arrangements and the resulting subversion of rights under the Federal Power Act. The court found that "The Commission can, no doubt, correct its own mistakes," but it did not specify the administrative remedies it deemed available. It concluded that the district court was without power to entertain the complaint and ordered it dismissed (1950) 83 PUR NS 33, 181 F2d 19, 23. We brought the case here since important issues in the administration of the Federal Power Act are at stake. (1950) 340 US 806, 95 L ed —, 71 S Ct 40.

Section 317 of the Federal Power Act in its present form confers on the district courts of the United States "exclusive jurisdiction of violations of this act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder." 49 Stat 862, Chap 687, 16 USCA § 825p. There can be no doubt, therefore, that if the complaint, fairly construed in light of the successful determination of the issues, seeks to enforce a duty which the Federal Power Act recognizes, the district court properly entertained the suit under the jurisdictional provisions of the act, reinforcing, as they do, the general jurisdictional provisions governing the district courts. See act of March 3, 1911, § 24 (1), (8), 36 Stat 1087, 1091, 1092, Chap 231, 28 USCA §§ 1331, 1337.

The Federal Power Act directs that "All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful." Section 205 (a), 49 Stat 851, Chap 687, 16 USCA § 824d (a).

We face at the outset the contention that this section confers on the Federal Power Commission authority to

award reparations for unreasonable rates collected in the past. Federal railroad rate legislation gave such a power to the Interstate Commerce Commission. Act of Feb 4, 1887, §§ 9, 16, 24 Stat 379, 382, 384, 385, Chap 104, as amended, 49 USCA §§ 9, 16 (1); cf. act of Aug 15, 1921, § 308, 42 Stat 159, 165, Chap 64, 7 USCA § 209. But it was not given to the Federal Power Commission. It was withheld deliberately. See S Rep No 621, 74th Cong 1st Sess 20. Wholesale consumers of electric energy were apparently considered, as a rule, adequately protected by the provisions of the act authorizing the Commission to grant prospective relief and, in certain circumstances, to order refunding of sums accumulated during the pendency of rate proceedings. Sections 205 (e), 206 (a), 49 Stat 852, Chap 687, 16 USCA §§ 824d (e), 824e (a). Despite the unqualified statutory declaration that unreasonable rates are unlawful, we think it clear that Congress did not intend either court or Commission to have the power to award reparations on the ground that a properly filed rate or charge has in fact been unreasonably high or low. If that were all the complaint before us showed, we would agree that recovery of damages in a civil action would not be an appropriate remedy, and that the complaint should have been dismissed.

But the case before us is very different. Montana-Dakota does not assert merely that the rates fixed and filed for it by the defendant were unreasonable. Montana-Dakota claimed and introduced evidence to show that some contracts required by the act to be filed were not filed at all; that others were filed months late; and that some were not the bona fide contracts obtained by arm's-length negotiation that on their face they appeared to be, but instead were "conceived and put into operation by the defendant and its aforesaid directors and officers for the purpose of exacting large charges from [Montana-Dakota] for the purpose, among other things, of offsetting charges of [Montana-Dakota] for electrical energy generated in North Dakota and transmitted to and sold to defendant for resale in South Dakota." See cause 6, par. 4 of the complaint. Thus, the complaint in substance alleges that Northwestern misled the Commission into approving schedules which would not have been approved had Northwestern complied with the obligations of full and fair disclosure imposed on it by the Federal Power Act. While the complaint does not artistically allege that domination by Northwestern prevented Montana-Dakota from complaining to the Commission that the rates and charges were unreasonable, that is its plain import and the facts were so found at the trial.

We are not here concerned with the complaint in so far as it sets forth a common-law cause of action based on misuse of powers by the directors of a controlled corporation. Such an action by itself of course cannot be brought in a Federal court in the absence of diversity of citizenship between the parties. But this does not preclude the same circumstances from giving rise to a cause of action that has its roots in the Federal Power Act. As such the controversy does fall within the jurisdiction of a Federal court. The essence of this cause of action is that the Federal Power Act imposed

on Northwestern the duty to charge and pay reasonable rates in its transactions with Montana-Dakota; and that while under the act rates appropriately filed are, when unchallenged, the legal rates and deemed to be reasonable, in the circumstances here alleged the schedules and contracts filed were not complete or timely or bona fide. Since it was coercively controlled, Montana-Dakota could neither file rates that were truly reasonable nor protest unreasonable rates filed on its behalf.

The court of appeals apparently closed the door of the district court to this suit on the assumption that relief could be had from the Federal Power Commission for the damage flowing from violation of the Federal Power Act. Of course a court would not grant relief, at least in the first instance, if an adequate administrative remedy were available. It is fundamental to Federal regulatory legislation that "no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." Myers v. Bethlehem Shipbuilding Corp. (1938) 303 US 41, 50, 51, 82 L ed 638, 643, 644, 58 S Ct 459. This principle is particularly relevant to rate regulation. Texas & P. R. Co. v. Abilene Cotton Oil Co. (1907) 204 US 426, 51 L ed 553, 27 S Ct 350, 9 Ann Cas 1075; Mitchell Coal & Coke Co. v. Pennsylvania R. Co. (1913) 230 US 247, 57 L ed 1472, 33 S Ct 916; Armour & Co. v. Alton R. Co. (1941) 312 US 195, 85 L ed 771, 61 S Ct 498. Compare Great Northern R. Co. v. Merchants Elevator Co. (1922) 259 US 285, 66 L ed 943, 42 S Ct 477.

But we do not find that the Federal Power Act provides administrative remedies to meet the situation before us. We have seen that that act does not authorize the Commission to award reparations to those subjected to unreasonable rates. The act likewise does not afford to the Commission the authority conferred on administrative agencies under other regulatory statutes to award damages to those injured by violations of the act. Compare act of Feb 4, 1887, § 9, 24 Stat 382, 49 USCA § 9; act of Aug 15, 1921, § 309 (e), 42 Stat 166, Chap 64, 7 USCA § 210 (e). The Power Act, it is true, does give the Commission authority to look into past rates in order to determine whether the act has been violated. Section 307 (a), 49 Stat 856, Chap 687, 16 USCA § 825f (a). See Atlantic Coast Line R. Co. v. Florida (1935) 295 US 301, 312, 79 L ed 1451, 1459, 55 S Ct 713. But such an inquiry cannot be made the basis for an administrative award of damages to the victims of the violations. Again, the Commission may, as the government suggests, have power under the omnibus provisions of § 309 to vacate its approval of a rate when approval has been obtained by fraud. 49 Stat 858, Chap 687, 16 USCA § 825h. But this does not authorize the Commission to fix rate orders retrospectively. The Commission may establish rates only "to be thereafter observed and in force." Section 206 (a), 49 Stat 852, Chap 687, 16 USCA § 824e (a).

If the Commission can neither fix rates retrospectively nor award damages, it clearly can afford no adequate remedy to Montana-Dakota. Vacating its acquiescence in the interlocking directorate or in the schedules filed by

Northwestern might prevent Northwestern from asserting the approval of the Federal agency in an action brought against it under state law; but it would not provide a basis for recovery by the injured party or impose any certain liability on the wrongdoer. We are bound to conclude that the court of appeals was in error in thinking that an adequate administrative remedy existed and precluded courts from granting relief.

But we cannot agree that the inability of the Federal Power Commission to grant relief requires that courts be similarly disabled. Courts, unlike administrative agencies, are organs with historic antecedents which bring with them well-defined powers. They do not require explicit statutory authorization for familiar remedies to enforce statutory obligations. Texas & N. O. R. Co. v. Brotherhood of R. & Steamship Clerks (1930) 281 US 548, 74 L ed 1034, 50 S Ct 427; Virginian R. Co. v. System Federation (1937) 300 US 515, 81 L ed 789, 57 S Ct 592; Deckert v. Independence Shares Corp. (1940) 311 US 282, 85 L ed 189, 61 S Ct 229. A duty declared by Congress does not evaporate for want of a formulated sanction. When Congress has "left the matter at large for judicial determination," our function is to decide what remedies are appropriate in the light of the statutory language and purpose and of the traditional modes by which courts compel performance of legal obligations. See County Comrs. of Jackson v. United States (1939) 308 US 343, 351, 84 L ed 313, 317, 60 S Ct 285. If civil liability is appropriate to effectuate the purposes of a statute, courts are not denied this traditional remedy because it is not specifically authorized. Texas & P. R. Co. v. Rigsby (1916) 241 US 33, 60 L ed 874, 36 S Ct 482; Steele v. Louisville & N. R. Co. (1944) 323 US 192, 89 L ed 173, 65 S Ct 226; Tunstall v. Brotherhood of Locomotive Firemen & Enginemen (1944) 323 US 210, 89 L ed 187, 65 S Ct 235; cf. De Lima v. Bidwell (1901) 182 US 1, 45 L ed 1041, 21 S Ct 743.

That civil liability is an appropriate remedy in the situation before us is attested alike by the words of the statute, by the force of familiar principles of liability, and by practical considerations in carrying out legislative objectives.

The Power Act is explicit that any "rate or charge that is not just and reasonable is hereby declared to be unlawful." Section 205 (a), 49 Stat 851, Chap 687, 16 USCA § 824d (a). The aim of Congress would be needlessly aborted if this "definite statutory prohibition of conduct" did not impose civil liability in a situation not covered by administrative remedies merely because no judicial relief was explicitly authorized. Compare Texas & N. O. R. Co. v. Brotherhood of R. & Steamship Clerks, *supra*, 281 US at p. 568, 74 L ed at p. 1045. The right of civil recovery by persons compelled to pay unreasonable or discriminatory rates to common carriers is one of the oldest forms of relief in our law. Western U. Teleg. Co. v. Call Publishing Co. (1901) 181 US 92, 45 L ed 765, 21 S Ct 561. To enforce a remedy for collection of unreasonable charges in the situation before us, therefore, would recognize deeply-rooted law; to deny it would be inconsistent with long-established judicial

practice. The experience of the Commission indicates that the statute itself, by virtue of the positive duties it commands, under normal circumstances is very largely its own sanction.[1] Want of explicitness in providing a familiar remedy for the rare case of disobedience should not be construed a denial of it.

To leave relief to the diverse and conflicting state law dealing with intercorporate relations would make for conflicting local administration of an important national problem. This court has recently shown marked reluctance to leave to the states determination of even state law questions involved in the administration of the Federal Power Act. First Iowa Hydro-Electric Co-operative v. Federal Power Commission (1946) 328 US 152, 90 L ed 1143, 63 PUR NS 193, 66 S Ct 906. What is involved here—the frustration, by misuse of the machinery of the Federal Power Act, of the command of Congress that rates be reasonable—has a Federal character and significance. We do not think it likely that Congress intended that there should be no relief for this kind of tampering with the Federal regulatory scheme other than that which might be afforded by the corporation law of the forty-eight states.

We could attribute such a purpose to Congress only if to allow civil relief in the situation before us would interfere with the administrative remedies contemplated under the act, or impose on courts alien responsibilities or duties they are not equipped to fulfil. No such consequence is remotely involved in utilizing this age-old remedy. The statute is based on the assumption that unlawful rates will ordinarily be promptly corrected at the initiative of injured parties permitted to resort to the Commission for prospective relief. Section 306, 49 Stat 856, Chap 687, 16 USCA § 825e. That procedure is not available when the wrong asserted is that the defendant corporation has established unlawful schedules by fraudulent domination of the utility with which it transacts business. To grant judicial relief for such a wrong will not interfere with the remedial procedure to which the act confines corporations which are their own masters.

Nor will it transfer to the courts responsibility for deciding questions which should properly be presented to the Power Commission. In a variety of situations we have recently emphasized the principle that courts and agencies "are to be deemed collaborative instrumentalities of justice." United States v. Morgan (1941) 313 US 409, 422, 85 L ed 1429, 1435, 40 PUR NS 439, 61 S Ct 999; (1939) 307 US 183, 83 L ed 1211, 29 PUR NS 47, 59 S Ct 795; Palmer v. Massachusetts (1939) 308 US 79, 84 L ed 93, 31 PUR NS 242, 60 S Ct 34. To that end it is established practice that courts may entertain actions brought before them, but call to their aid the appropriate administrative agency on questions within its administrative competence. See Smith v. Hoboken R. Warehouse & S. S. Con-

[1] Data supplied by the Commission show that rate reductions proposed by utilities invariably become effective as filed. More than half of the rate increases likewise become effective automatically as filed. Those which are suspended by the Commission are as a general rule withdrawn, modified, or approved after informal conferences between the parties and the Commission's staff.

necting Co. (1946) 328 US 123, 90 L ed 1123, 64 PUR NS 422, 66 S Ct 947, 168 ALR 497; Thompson v. Texas Mexican R. Co. (1946) 328 US 134, 90 L ed 1132, 66 S Ct 937; cf. United States Alkali Export Asso. v. United States (1945) 325 US 196, 210, 89 L ed 1554, 1564, 65 S Ct 1120. In the El Dorado Oil Works litigation we held that proper procedure required the district court to entertain a suit on a contract but to look to the Interstate Commerce Commission for guidance as to transportation practices involved in carrying out the contract. General American Tank Car Corp. v. El Dorado Terminal Co. (1940) 308 US 422, 433, 84 L ed 361, 370, 60 S Ct 325; El Dorado Oil Works v. United States (1946) 328 US 12, 90 L ed 1053, 66 S Ct 843. The fact that the Federal Power Commission is not itself authorized to award damages does not disable it from advising a court on questions on which its judgment is needed. See United States v. Morgan, *supra;* Atlantic Coast Line R. Co. v. Florida (1935) 295 US 301, 312, 79 L ed 1451, 1459, 55 S Ct 713. We see no reason why the Commission's findings should not be sought here.

We think, therefore, that a cause of action within the jurisdiction of the district courts is stated by a complaint charging a distributor of electric energy at wholesale in interstate commerce (1) with buying or selling at unreasonable rates, (2) with failure to comply with procedural requirements of the Federal Power Act, and (3) with preventing others from resorting to the remedies afforded by that act. In such cases the district court should stay proceedings and request determination by the Federal Power Commission of matters within the Commission's special competence. It is within the Commission's domain to rule whether filed rates should not, in view of all relevant circumstances, be considered "reasonable" rates. It also falls to the Commission to decide what would have been the reasonable rates. The opinion of the Commission, being "only a preliminary interim step" towards final judgment, would not be a reviewable order under § 313 (b) of the act, 16 USCA § 8251 (b), but would be reviewed only as a part of the judgment entered by the district court. Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 618, 619, 88 L ed 333, 353, 354, 51 PUR NS 193, 64 S Ct 281.

The objections raised to this procedure have apparently not been considered substantial by the Federal Power Commission, the body primarily charged with administration of the act.[2] We do not think they should prevail. The function of the district court is not simply to serve as a facade behind which the Commission is enabled to accomplish indirectly what it cannot do directly. Certain issues of fact—the completeness of disclosure, for instance, or the loyalties of the directors—are properly for the court. Action by the court may similarly be required in determining the appropriate disposition of the fund. See Federal Power Commission v. Interstate Nat. Gas Co. (1949) 336 US 577, 93 L ed 895, 79 PUR NS 45, 69 S Ct 775; (1950) 84 PUR NS 33, 181 F2d 833. Recovery by Montana-

[2] In its brief here the Commission urged adoption of substantially the ground set forth in this opinion.

Dakota need not be a windfall to that company. Many changes in costs charged utilities are not reflected in prices they may collect. Compare St. Louis & O'Fallon R. Co. v. United States, 279 US 461, 488, 505–509, 73 L ed 798, 810, 818, 819, PUR1929C 161, 49 S Ct 384 (Mr. Justice Brandeis, dissenting). To the extent that Montana-Dakota has passed on its loss to its customers, they may be permitted recovery from it on well-established principles of unjust enrichment. And even if the effect of awarding relief is ultimately to benefit Montana-Dakota, it certainly has a better claim to the exacted funds than Northwestern. The procedure here outlined is not unlike that which the court employed in United States v. Morgan (1941) 313 US 409, 85 L ed 1429, 40 PUR NS 439, 61 S Ct 999; (1939) 307 US 183, 83 L ed 1211, 29 PUR NS 47, 59 S Ct 795, *supra*, where a similar demand was made on the resourcefulness of law to find a remedy to meet an unusual situation. Such a remedy not only defeats unjust enrichment as between private parties. This is accomplished in the public interest of effectuating the Federal Power Act.

Because we conclude that the district court, while correct in refusing to dismiss the complaint, should have asked the Federal Power Commission to determine matters peculiarly within its competence and report its finding to that court, we think the case should be remanded to that court for further proceedings not inconsistent with this opinion. We do not, of course, intimate any opinion as to the sufficiency of the evidence to support the conclusion that the filed rates in this case should not be deemed lawful. Nor would we restrict any appropriate use the Commission might wish to make of evidence adduced at the trial.

COLORADO PUBLIC UTILITIES COMMISSION

Re Frank R. Wright et al. Doing Business As "A-Zone Cab Company"

Application No. 10904, Decision No. 36506
April 18, 1951

MOTION *to rescind Commission decision authorizing transfer of motor carrier rights; denied.*

Certificates of convenience and necessity, § 139 — Transfer of certificate — Necessity of Commission authorization — Motor carriers.

1. A motor carrier may not transfer its certificate unless and until after application has been made to, and authority obtained from, the Commission, p. 146.

RE FRANK R. WRIGHT

Certificates of convenience and necessity, § 23 — Commission power to order transfer — Motor carriers.

2. The Commission cannot order or direct the transfer of a motor carrier certificate, but can only authorize such transfer, p. 146.

Certificates of convenience and necessity, § 170 — Rescission of order authorizing transfer — Delay in payment.

3. The Commission cannot rescind an order authorizing the transfer of a motor carrier certificate, which was to become effective after twenty-one days, for failure of the transferee to pay the balance of the agreed purchase price prior to the effective date, where under the terms of the contract the balance is not payable until Commission approval of the transfer, p. 146.

Contracts, § 3 — Jurisdiction of Commission.

4. The Commission, in a proceeding to rescind an order authorizing the transfer of a motor carrier certificate, may not pass upon the validity of the original contract, determine whether or not it can be enforced, or decide whether or not the delivery of a cashier's check on the effective date of the decision constitutes a legal payment of the balance due on the purchase price, as these questions are matters for the courts, p. 146.

APPEARANCES: John F. Mueller, Denver, for Frank R. Wright and Tony Saracino; William R. Rule, Pueblo, pro se.

By the COMMISSION: By Decision No. 31381, of date October 4, 1948, Frank R. Wright and Tony Saracino, co-partners, doing business as "A-Zone Cab Company," Pueblo, Colorado, were authorized to operate as motor vehicle common carriers for the transportation, on call and demand, by means of 5-passenger-and-driver sedan taxicabs, of passengers and their baggage, in the same vehicle, between points within a radius of 5 miles of the city of Pueblo, Colorado, "PUC No. 1944" being assigned to the operation.

By Decision No. 36065, of date February 1, 1951, said certificate-holders were authorized to transfer all their right, title, and interest in and to said PUC No. 1944 to William R. Rule, Pueblo, Colorado, the order to become effective twenty-one days from the date thereof.

Under date of February 21, 1951, said Frank R. Wright and Tony Saracino filed motion to rescind said Decision No. 36065, on grounds hereinafter discussed.

Answer to said motion was filed by William R. Rule on February 27, 1951, and said motion was set for hearing at the hearing room of the Commission, 330 State Office building, Denver, Colorado, March 13, 1951, at 10 o'clock A.M., at which said time and place hearing was had, and at the conclusion of the evidence, the matter was taken under advisement.

It is recited in said Decision No. 36065, and admitted by both parties, that the consideration for the transfer was $1,000. The sum of $400 was paid to transferors by transferee on June 5, 1950, and the balance was to be due upon authorization of the transfer by the Commission and approval of the transfer by the city of Pueblo. The contract was admitted in evidence as Exhibit No. 4, and is in words and figures as follows:

"State of Colorado } ss. Contract
County of Pueblo }

"Receipt is hereby acknowledged of the sum of $400 as down payment for the purchase of the certificate of public convenience and necessity of the A-Zone Cab Company together with the name operating in the city of Pueblo and the territory adjacent thereto.

"It is understood that the total purchase price for said certificate is the sum of $1,000, the balance to be paid when the Public Utilities Commission of the state of Colorado and the city of Pueblo approve said transfer.

"In the event the said transfer is not approved, the down payment above set forth to be returned to purchaser.

"Signed and dated this 5th day of June, 1950.

S. (William F. Rule)
Purchaser
S. (Tony Saracino)
S. (Frank R. Wright)
Seller"

Frank R. Wright testified that the balance of $600 due under this contract had not been paid. Upon receipt of a copy of said decision (evidently not noticing the effective date), he contacted Rule and demanded payment of the balance of the purchase price. Rule promised to arrange for the payment, and upon being called again by telephone, advised Wright that he would meet him at Wright's place of business, but did not then appear. Wright took no further action until February 19, 1951, when he contacted Attorney Mueller, and, following his advice, filed the motion to rescind the decision, upon the ground that the balance of the purchase price had not been paid upon demand. He also addressed letters to Rule and the city council of Pueblo, in words and figures as follows:

"Mr. William R. Rule
Mineral Palace Park
Pueblo, Colorado

February 19, 1951.

"Dear Sir:

"On June 5, 1950, you entered into a written agreement with the undersigned whereby you agreed to purchase certain taxicab permits and a certificate of public convenience and necessity owned by the undersigned for a total consideration of $1,000. The written contract contains a receipt for the payment of $400 of the agreed consideration and the balance of $600 became due and payable upon the approval of said contract of sale by the Public Utilities Commission of the state of Colorado and the city of Pueblo. The transfer of the Pueblo taxicab licenses was approved and on February 1, 1951, the Public Utilities Commission approved the transfer of said certificate as contemplated by the terms of the agreement.

"Although payment of the balance of the purchase price was due on February 1, 1951, you have made no effort to pay the same although demand for payment has been made upon you.

"Because of your violation of the terms of the contract concerning payment of balance of purchase price, you are notified that the undersigned have elected to rescind and annul said contract of June 5, 1950. A formal application has been filed with the Public Utilities Commission for rescission of its decision authorizing the transfer of said certificate and we will no longer recognize said contract as

existing between us because of your breach of same.

"A copy of the motion filed with the Commission is enclosed for your information. We will return the $400 paid when we are given possession of our property.

"Yours truly,
s. (Frank R. Wright)
s. (Tony Saracino)"

"City Council
City Hall
Pueblo, Colorado

February 19, 1951

"Gentlemen:

"On June 5, 1950, the undersigned agreed to sell certain Pueblo taxicab licenses issued to them under the name of 'A-Zone Cab Company' and a certificate of public convenience and necessity issued by the Colorado Public Utilities Commission. The purchaser was Mr. William R. Rule and the consideration for said purchase and sale was $1000. $400 was paid at the time of the execution of the contract on June 5, 1950, and the balance was payable upon approval of said contract of sale by the city of Pueblo and the Public Utilities Commission. The Commission approved the transfer on February 1, 1951, but the purchaser has failed and refused after demand to pay the balance of $600 which became due on February 1, 1951.

"Because of this breach of the contract, the transferors have elected to rescind the same and have notified the Public Utilities Commission to that effect. Please be advised that for the above reason said proposed contract of sale has been terminated and the undersigned remain the owners of the taxicab licenses issued by the city of Pueblo.

"Yours truly,
s. (Frank R. Wright)
s. (Tony Saracino)"

On February 21, 1951, Wright received from Rule, by registered mail, a cashier's check on the Minnequa Bank of Pueblo, Colorado, payable to his order, for the balance of the purchase price, and personally returned the check to Rule on the same day. Wright testified that he is willing to return to Rule the $400 down payment, provided the decision is rescinded.

William R. Rule testified that after receipt of a copy of the decision, Wright called upon him and they discussed payment of the balance due by monthly instalments. Later, he was advised that Saracino was not agreeable to that arrangement, and wanted cash. Rule then tried to contact Wright on February 19th, and again on February 20th, making several telephone calls to his home and place of business, but could not locate him, and finally purchased the cashier's check on February 21st and sent same to Wright by registered mail. The same day, Wright returned the check personally, and advised that he had decided to keep the business.

It is evident that the certificate-holders did not properly construe the decision of this Commission. It bears date of February 1, 1951, and recites: "This order shall become effective twenty-one days from the date hereof."

In other words, it became effective on February 21, 1951, and not before that date. In the letters to Rule and the city council of Pueblo, Wright and Saracino stated that the payment of

the balance of the purchase price became due on February 1, 1951, while in fact, it was not due until February 21, 1951. These letters also alleged a breach of the contract of sale on the part of Rule, as of February 1, 1951, because of his failure to make this payment, although the contract specifically provides that this balance was to be paid "when the Public Utilities Commission of the state of Colorado and the city of Pueblo approve said transfer."

The record does not show whether or not the city of Pueblo has approved the transfer, but it does show that the approval of the transfer by this Commission was not effective until February 21, 1951. Moreover, the motion to rescind our decision was filed on February 21, 1951, the date the decision became effective, and upon this effective date, Rule delivered the cashier's check to Wright to cover the balance of the purchase price that was due upon that date under the terms of the contract.

[1–3] Here we have a decision of this Commission, effective February 21, 1951, which is permissive, only. By its terms, the certificate-holders are authorized to transfer their operating rights to Rule, subject to payment of outstanding indebtedness against the operation. Under the rules of this Commission, no common carrier shall transfer his certificate unless and until application has been made to, and authority obtained from, the Commission to do so. The application for transfer was made to the Commission, and the transfer was *authorized,* but not directed, by the Commission. In our opinion, the Commission cannot order or direct the transfer, but can only authorize it; nor can the Commission rescind an order authorizing a transfer effective February 21, 1951, for failure of transferee to pay the balance of the agreed purchase price *prior* to that date, said balance being payable under the terms of the contract on the effective date of the transfer.

[4] The Commission will not here attempt to pass upon the validity of the original contract, or whether or not it can be enforced, nor upon the question of whether or not the delivery of a cashier's check by Rule to Wright on the effective date of our decision constitutes a legal payment of the balance then due upon the purchase price. These are matters that must be determined by the courts, provided Rule wishes to proceed further. We can only say from the record that the Commission *authorized* the transfer, as it has the power to do under the statute; that the decision referred to was permissive, only, and effective February 21, 1951, and is still effective, and the Commission has no power to *direct* the transfer or enforce an order that is permissive, only. In the event that the parties elect to proceed with the transfer, meet the requirements as to tariffs, insurance, and equipment lists, and file the usual form of "Acceptance," the transfer will become effective as of the date of such filing. They are permitted or authorized to do so under the terms of the decision referred to, but are not compelled so to do.

The Commission finds:

That the statement preceding should be, and herby is, made a part of these findings.

That motion to rescind decision No.

36065 filed by Frank R. Wright and Tony Saracino, doing business as "A-Zone Cab Company," on February 21, 1951, should be denied.

FEDERAL POWER COMMISSION

Re Phillips Petroleum Company

Docket No. G-1148
April 17, 1951

MOTION *by company producing oil and natural gas to limit the issues to be considered at a rate hearing to a determination of whether the company is a natural gas company within the meaning of the Natural Gas Act; granted.*

Procedure, § 13 — Limitation of issues — Status under Natural Gas Act.

A motion by a company producing petroleum and natural gas that the Federal Power Commission limit the issues to be considered, at a hearing scheduled in connection with the company's status under the Natural Gas Act as well as the rates, charges, and classifications in effect in regard to its transportation or sale of natural gas, to a determination of whether it was a natural gas company within the meaning of the act was granted as necessary in the interest of orderly procedure as well as the public good.

(BUCHANAN, Commissioner, dissents.)

By the COMMISSION: On March 27, 1951, Phillips Petroleum Company (Phillips), respondent herein, filed with the Commission a motion requesting that the Commission amend its order of February 9, 1950, by limiting the issues to be considered at the hearing set for April 3, 1951, "to a determination of whether respondent is a 'natural-gas company' within the meaning of the Natural Gas Act."

The reasons stated by Phillips in support of its motion filed March 27, 1951, may be summarized as follows:

The Commission has on several occasions formally announced that in its opinion the Natural Gas Act does not give the Commission jurisdiction over independent producers and gatherers of natural gas, and no decisions of any court have held that the Commission was incorrect in this construction of the act. The Commission's jurisdiction in this matter presents a serious question which must be resolved before the Commission can take other action, and the Commission's duty to the public obligates it to see that neither its own staff nor Phillips is required to spend large amounts of time and money preparing and submitting evidence as to rates which may never be material. The seriousness of the jurisdictional question presented makes it the Commission's duty to the public not to require the presentation of rate

testimony until that question shall have been determined.

In the event the Commission determines that Phillips is a natural gas company, the Commission must then give consideration to the respective merits and advantages of various standards of rate regulation which may be proposed. By including in one hearing both the question of its jurisdiction and the question of the standards of regulation to be adopted, the Commission's decision with respect to the issue of jurisdiction will long be delayed, thus unduly extending the doubt and confusion now confronting the public and the oil and gas industry. If, however, the hearing now in progress is limited to the question of the Commission's jurisdiction, the existing uncertainty and confusion in this respect may be brought to an end through a prompt decision on this issue.

Phillips is engaged in the production and manufacture of many products which are of vital importance in the present Emergency declared by the President. Many of these products are manufactured in whole or in part from natural gas. If the scheduled hearing is limited to the issue of jurisdiction, company technical experts and executives can devote their time to the defense effort, whereas if the issues are not so limited these same company employees must devote a large part of their time to the preparation of rate testimony and evidence.

Phillips alleges that for these reasons the requested amendment is advantageous to the Commission, to Phillips, and is in the public interest.

Objections to the granting of the motion have been filed by the city of Kansas City, Missouri; the city of Milwaukee, Wisconsin; the city of Detroit, Michigan; the county of Wayne, Michigan; the Commission's staff; and the state and the Public Service Commission of Wisconsin, the latter two requesting oral argument on the motion.

The following have submitted statements in support of, or consent to the granting of, the motion filed by Phillips: Oil and Gas Commission of Arkansas; the state of Texas; the state of New Mexico and the Oil Conservation Commission of New Mexico; Corporation Commission of Oklahoma; Independent Natural Gas Association; Texas Independent Producers and Royalty Association, et al.; Port Neches Royalty Owners Association; Old Ocean Royalty Owners Association, et al.; Corporation Commission of Kansas; state of Mississippi and Oil and Gas Board of Mississippi; Commissioner of Conservation of state of Louisiana; Texas County Land and Royalty Association.

On October 29, 1948, the Commission issued its order herein instituting an investigation of Phillips for the purpose of enabling the Commission:

(A) To determine with respect to the respondent:

(i) Whether it is a natural gas company within the meaning of the Natural Gas Act; and

(ii) Whether, in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, any rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices, or contracts affecting such rates, charges, or classi-

fications are unjust, unreasonable, unduly discriminatory, or preferential, and

(B) If it shall find, after hearing, that the respondent is a natural gas company within the meaning of the Natural Gas Act, and that any of respondent's rates, charges, classifications, rules, regulations, practices, or contracts, subject to the jurisdiction of the Commission, are unjust, unreasonable, unduly discriminatory, or preferential, to determine and fix by order or orders just and reasonable, nondiscriminatory or nonpreferential rates, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and in force.

On February 9, 1950, the Commission issued its order herein specifying issues and ordering that a public hearing be held on March 20, 1950, respecting all matters and issues set forth in this order and the Commission's order of investigation under date of October 28, 1948.

The date fixed for hearing by the Commission's order issued February 9, 1950, has been postponed from time to time by Commission order, and said hearing began on April 3, 1951, and is now in progress.

On July 6, 1950, Phillips filed with the Commission a motion requesting that the issues herein be limited to a determination of whether or not Phillips is an independent producer and gatherer of natural gas within the meaning of the Commission's Order No. 139 and § 03.79 of the rules of the Commission. This motion was dismissed by the Commission's order issued July 25, 1950, on the grounds that the motion raised questions which became moot when the Commission's Order No. 139 was rescinded by the Commission's Order No. 154 dated July 11, 1950.

Upon consideration of the motion to limit issues filed herein by Phillips on March 27, 1951, of the Commission's orders issued herein, and all of the foregoing, the Commission finds:

(1) Although the Commission by order has set forth the issues to be heard herein, the order in which such issues shall be heard has not been prescribed.

(2) Orderly procedure requires that the following issue, heretofore set forth in the Commission's orders issued herein, first be heard at the hearing now in progress, viz: Whether Phillips Petroleum Company is a "natural-gas company" within the meaning of the Natural Gas Act.

(3) Orderly procedure requires, and it is in the public interest, that hearing be held upon and a determination made by the Commission of the issue of whether Phillips Petroleum Company is a "natural-gas company" within the meaning of the Natural Gas Act, before hearing is held upon any other issue in this proceeding.

(4) Hearing upon issues herein other than that set forth in paragraph (2) hereof should be held as soon as practicable after hearing upon said issue, at a time and place to be fixed by further order of the Commission.

(5) The motion to limit issues filed by Phillips on March 27, 1951, should be granted to the extent hereinafter ordered, and in all other respects should be denied.

The Commission *orders:*

(A) The matters to be presented at the public hearing now in progress shall be only those relevant to the fol-

lowing issue set forth in the Commission's order of investigation issued October 29, 1948, to wit: Whether Phillips Petroleum Company is a "natural-gas company" within the meaning of the Natural Gas Act.

(B) A public hearing to be held upon the remaining issues set forth in the Commission's order of investigation issued October 29, 1948, at a time and place to be fixed by further order of the Commission.

(C) The motion to limit issues, filed herein by Phillips Petroleum Company on March 27, 1951, is granted to the extent herein ordered, and in all other respects is denied.

BUCHANAN, Commissioner, dissenting: It is with great regret that in what may seem to be a purely procedural step I find it necessary to dissent from my colleagues.

While the action of the majority seems to have the merit of attempting to put first things first and also of seeking an orderly procedure in the public interest, it is my judgment that the action may have the opposite result.

Whatever our decision may ultimately be on the jurisdictional question, there can be little doubt that an attempt will be made by the aggrieved party to appeal that decision, although a question has already been raised on the record whether the parties complaining of the rates charged by Phillips would be an "aggrieved party" for purposes of appeal in the absence of a determination of the merits of the rate issue. But even if an appeal may ultimately be taken, it does not follow that the rights of the parties complaining of the rates charged are fully protected, if the effect of the procedure followed is to unnecessarily delay a rate reduction to which it may be found they are entitled.

Our experience in those cases where jurisdiction was the sole major issue indicates that the average time elapsed between the date of the conclusion of the formal hearing and the date of the final decision, judgment, or decree in the appellate courts exceeds three years.[1] So it would appear that upon conclusion of our hearings on the jurisdictional issue, even if we find that the Natural Gas Act confers jurisdiction, the state of Wisconsin and the city of Detroit, Michigan, must wait three years before the substantive issue in which they are interested —just and reasonable rates—can be pursued to final hearing before this Commission.

In other words, if the present rates are excessive, reduction of those rates will be postponed by as much as three

[1] Court reviews of Commission orders in the method provided by statute have included nine cases in which a jurisdictional question was the only major issue. In those nine cases an average of approximately forty months elapsed between the conclusion of the formal Commission hearing and the final court judgment and decree. The cases are: Federal Power Commission v. East Ohio Gas Co. (1950) 338 US 464, 94 L ed 268, 82 PUR NS 1, 70 S Ct 266; Connecticut Light & P. Co. v. Federal Power Commission (1945) 324 US 515, 89 L ed 1150, 58 PUR NS 1, 65 S Ct 749; Jersey Central Power & Light Co. v. Federal Power Commission (1943) 319 US 61, 87 L ed 1258, 48 PUR NS 129, 63 S Ct 953; Montana Power Co. v. Federal Power Commission (1950) — US App DC —, 85 PUR NS 161, 185 F2d 491; Border Pipe Line Co. v. Federal Power Commission (1948) 84 US App DC 142, 77 PUR NS 76, 171 F2d 149; Cia Mexicana De Gas S. A. v. Federal Power Commission (1948) 75 PUR NS 17, 167 F2d 804; Georgia Power Co. v. Federal Power Commission (1946) 62 PUR NS 143, 152 F2d 908; Wisconsin Pub. Service Corp. v. Federal Power Commission (1945) 58 PUR NS 151, 147 F2d 743; Hartford Electric Light Co. v. Federal Power Commission (1942) 46 PUR NS 198, 131 F2d 953.

years more than if the jurisdictional and substantive issues were tried simultaneously. Unfortunately, under the situation created by the Commission's action severing the two issues for hearing purposes, there is no way for the complainants against Phillips' rates to ever recover payment of the three years of excessive rates, if those rates should ultimately be found to be excessive, because the Natural Gas Act makes no provision for reparations.

Furthermore, I believe that an examination made of the past practices of the Federal Power Commission in rate cases will reveal no single instance where the jurisdictional question was separated from the rate question, and there are good reasons for this practice. If the two issues were heard together in the instant case, as has been the practice of the Commission, where do the equities fall? The answer seems obvious: Chiefly inconvenience to Phillips, on the one hand, and possible savings of three years excessive rates to the ultimate consumers, on the other.

In this connection, I believe what was said some time ago in an extemporaneous statement by an early and respected member of this Commission is pertinent here:

". . . I am very frank to say that in the position I find myself in, understanding that I am one of the five gentlemen who are to represent the public's interest, I hope, knowing all the time that we do represent the public, that if after a thorough study of this problem, I should have a lively doubt about it, I would unhesitatingly resolve that doubt in favor of the public interest, and for this reason, as far as I am concerned: that if in resolving that doubt in favor of the public interest, I may have unwittingly done the applicant an injustice, that injustice may be relieved and corrected by an opinion of the supreme court; whereas, if I should resolve the doubt against the public interest, I do not now presently think of any effective means by which the public interest could be protected against my injudicious decision. For that reason I would resolve a real doubt in favor of the public interest. . . ."[2]

I would deny the motion filed by Phillips.

[2] Commissioner McNinch in the hearing [in] Re Appalachian Electric Power Co. Project No. 739, February 17, 1931, T. 254.

CALIFORNIA PUBLIC UTILITIES COMMISSION

Re Pacific Gas & Electric Company

Decision No. 45414, Application No. 32124
March 6, 1951

APPLICATION *by gas and electric company for authority to issue and sell common stock; granted.*

Security issues, § 112 — Competitive bidding requirement — Common stock — Stockholders' pre-emptive rights.

A gas and electric company's plan to offer shares of stock to stockholders, pursuant to their pre-emptive rights, is exempt from the rule requiring competitive bidding.

APPEARANCES: Ralph W. DuVal and Richard H. Peterson, for applicant; Dion R. Holm, City Attorney, and Paul L. Beck, Chief Valuation and Rate Engineer in the city attorney's office, for the city of San Francisco, interested party; John W. Collier, City Attorney, and Loren W. East, Public Utility Engineer, for the city of Oakland, interested party.

By the COMMISSION: Pacific Gas and Electric Company has filed this application for an order authorizing it to issue, sell, and deliver not exceeding 1,419,562 shares of its common capital stock of the aggregate par value of not exceeding $35,489,050.

Applicant proposes to use the net proceeds from its shares of stock to reimburse its treasury and to provide the cost of constructing additions, betterments, extensions and improvements to its plants, properties, and facilities. It reports that as of November 30, 1950, its capital expenditures for which it had not been reimbursed through the issue of securities amounted to $233,343,832.39 and that the unexpended balances of authorizations for capital additions and improvements in progress of construction aggregated $157,347,060.99, segregated to departments as follows:

Electric	$137,587,338.53
Gas	17,562,416.70
Water	253,334.78
Steam Sales	181,174.86
Other Physical Property	5,733.81
Common Utility	1,757,062.31
Total	$157,347,060.99

Not all the construction jobs now in progress will be completed this year. Applicant estimates that its expenditures for capital purposes during the twelve months ending November 30, 1951, will equal or exceed the sum of $130,000,000 of which approximately $75,000,000 may be provided with funds now in its treasury or to become available from internal sources, leaving approximately $55,000,000 to be obtained from other sources.

The testimony indicates that applicant is of the opinion it should undertake the sale of shares of common stock at this time, rather than some

other form of security, in order to improve its capital structure. In this connection, it reports its capital ratios as of December 31, 1950, and after giving effect to the proposed issue, as follows:

	Dec. 31, 1950	Pro Forma
Bonds	53.0%	51.2%
Preferred stock	20.9	20.1
Equity capital	26.1	28.7
Total	100.0%	100.0%

The record shows that applicant proposes to offer the 1,419,562 shares of stock to the holders of the presently outstanding shares of common stock of record at the close of business on March 13, 1951, in proportion to the number of shares of common stock then held, being at the rate of one new share for each seven now held; that it plans to issue transferable warrants on or before March 19, 1951, evidencing rights to subscribe for the additional shares, which rights shall expire at the close of business on April 4, 1951; and that it will issue and sell its shares upon subscription and payment of the purchase price in accordance with the terms of such warrants. In order to insure the sale of all the shares of stock, the company intends to enter into an underwriting agreement for the sale to underwriters of the shares not subscribed and paid for pursuant to the offering to the stockholders.

The record shows that the proposed underwriting agreement contemplates that the underwriters will purchase said unsubscribed shares from applicant at the same price at which such shares first are offered to stockholders, and in addition will pay to applicant an amount equivalent to 65 per cent of the excess over such price at which they may dispose of such shares. If any unsubscribed shares shall remain unsold by the underwriters at the close of business after the expiration of twenty full business days following the stockholders' subscription period, such shares shall be deemed to have been sold at the average sales price of applicant's common stock on the New York Stock Exchange on that day, or, if no shares are traded on that day, then at the closing bid price on such exchange. As compensation to the underwriters for their commitments and obligations, applicant will pay to them the sum of 35¢ a share for each of the 1,419,562 shares plus an amount equal to 50¢ a share for each share up to a maximum of 250,000 shares (or such greater number of shares as may be designated by applicant prior to the close of business on April 3, 1951), acquired by the underwriters upon the exercise of subscription warrants purchased by or for the accounts of the underwriters.

Applicant has filed with the Securities and Exchange Commission a registration statement. While at this time it contemplates the sale of its shares of stock at $31 a share, it reports that it will be unable to determine the exact price until March 13, 1951, when it hopes the statement will become effective, and accordingly it seeks at this time a preliminary order approving the issue of said shares. In due course it will file a supplemental application showing the price at which it proposes to dispose of its stock and will request a final order in this proceeding.

The issue of the shares of stock to applicant's stockholders pursuant to their pre-emptive rights is exempt from the requirements of the Commission's

competitive bidding rule. Applicant asks that an order exempting from such requirements the issue of the unsubscribed shares be made at this time. The number of such shares to be sold to underwriters is indefinite, of course, due to the offering first to be made to the present stockholders.

It clearly appears that applicant will have need for the proceeds from its shares of stock to enable it to proceed with its construction program, and that under the conditions surrounding this particular proposed issue, as set forth in the record in this proceeding, the Commission is warranted in exempting the issue of said shares of stock, as requested, from the requirements of its competitive bidding rule.

Applicant's presently outstanding shares of common stock are owned by more than 93,700 stockholders. It is unable at this time to state how many of said stockholders will exercise the subscription rights to be granted to them. It believes, however, that they will be exercised by such a large number as will warrant it to ask relief from filing with the Commission a report required by the Commission's General Order No. 24-A, which, among other things, calls for the name of each purchaser of stock. Applicant will keep in its office, as a permanent record, a full and complete record with respect to the subscriptions for shares of its common stock and certificates to be issued. Following the closing date for the exercise by the stockholders of their rights to subscribe for additional shares of common stock, applicant proposes to make a detailed analysis of the entire transaction and to submit a copy thereof to the Commission.

The Commission will accept such analysis in lieu of a report, or reports, under General Order No. 24-A.

Order

A public hearing having been held in this matter and the Commission having considered the evidence submitted and being of the opinion that the money, property or labor to be procured or paid for by the issue of 1,419,562 shares of common stock by Pacific Gas and Electric Company is reasonably required by it for the purposes specified herein; that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; and that this application should be granted, subject to the provisions of this order; therefore,

It is hereby *ordered* as follows:

1. Pacific Gas and Electric Company, after the effective date hereof and on or before December 31, 1951, may issue, sell and deliver, upon subscription pursuant to rights evidenced by transferable warrants to be issued to the holders of record of its common stock at the close of business on March 13, 1951, not exceeding 1,419,562 shares of its common stock at such price as the Commission hereafter may fix in a supplemental order in this proceeding.

2. Pacific Gas and Electric Company, after the effective date hereof and on or before December 31, 1951, may issue and sell to underwriters such of said 1,419,562 shares of common stock as have not been subscribed and paid for pursuant to the offering to applicant's stockholders, such unsubscribed shares to be sold at such price as the Commission hereafter may fix in a supplemental order in this proceeding.

The issue of said shares of stock is hereby exempted from the requirements of the Commission's competitive bidding rule set forth in Decision No. 38614, dated January 15, 1946, 63 PUR NS 140, provided applicant obtains for said shares a price satisfactory to the Commission.

3. Pacific Gas and Electric Company shall use the net proceeds to be received from the issue and sale of said 1,419,562 shares of common stock to reimburse its treasury in part on account of capital expenditures made on or prior to November 30, 1950, and/or to pay in part the cost of additions, extensions, betterments, or improvements to its plants, properties and facilities made or to be made subsequent to November 30, 1950.

4. The authority herein granted to issue and sell said 1,419,562 shares of common stock will become effective when the Commission by a supplemental order shall have fixed the price at which said shares of stock may be sold. All other authority granted by this order is effective upon the date hereof.

5. Pacific Gas and Electric Company shall, within six months after the issue, sale, and delivery of said shares of stock or any part thereof, file with the Commission a copy of the analysis referred to in the preceding opinion in lieu of a report under General Order No. 24-A, together with a statement showing the number of shares sold to underwriters, and the expenses incurred by applicant in connection with the issue and sale of said 1,419,562 shares of stock.

MASSACHUSETTS SUPREME JUDICIAL COURT. SUFFOLK

Helen L. Wilkinson

v.

New England Telephone & Telegraph Company

— Mass —, 97 NE2d 413
March 6, 1951

ACTION *by telephone subscriber to recover for alleged financial losses resulting from intermittent failure of service; judgment for telephone company.*

Service, § 166 — Rules — Damages for service failure.

1. A telephone company's filed regulation providing that for any complete failure of service of more than twenty-four hours it would make pro rata adjustment of its charges precludes any recovery by a subscriber for alleged financial losses resulting from intermittent failures of service, none of which continued for as much as twenty-four hours, p. 157.

Service, § 166 — Obligation to serve — Limitations in filed regulations.

2. The obligation of a telephone company to render service to a subscriber is limited by its regulations, which, on filing, become an integral part of the relationship which it enters into with the subscriber, p. 158.

Service, § 166 — Reasonableness of telephone regulation — Service interruption.

3. A telephone company's filed regulation providing that for any complete failure of service for more than twenty-four hours it will make pro rata adjustment of its charge is not unreasonable, since, because of the complexities and intricacies of modern telephony, there are so many ways by which failures of service could occur that the company ought not to be held liable until such failure continues for at least twenty-four hours, p. 158.

APPEARANCES: W. E. Doherty, Jr., Boston, for plaintiff; J. N. Clark, Boston, for defendant.

Before Qua, CJ., and Ronan, Williams, and Counihan, JJ.

COUNIHAN, J.: This is an action described in the amended writ as in tort. The declaration contains four counts, two in contract and two in tort. The case came on for trial before a jury, and after an opening statement by counsel for the plaintiff, the judge, on motion, directed a verdict for the defendant. The plaintiff excepted and the action is here upon a report of the judge to determine whether the direction of a verdict for the defendant "was correct either because of lack of jurisdiction of the superior court or because the provisions of General Regulations VI A approved by the Department of Public Utilities were such a limitation of the defend-

ant's obligation to the plaintiff that no damages could be recovered even if the plaintiff proved actual financial loss due to the kind of failure of the defendant's service to the plaintiff on which she bases her action."

The opening statement was in substance as follows: The defendant is a public service corporation engaged in the transmission of intelligence within the commonwealth and elsewhere by electricity by means of telephone lines. By statute it is made a common carrier and its rates, regulations, and practices are subject to the control and supervision of the Department of Public Utilities hereinafter called the Department. Gen. Laws (Ter Ed) Chap 159.[1] The plaintiff, a hairdresser, was engaged in business in Boston. Sometime in March, 1946, she subscribed for and obtained a business telephone. She made the deposit required by the defendant and regularly paid all bills rendered. She made no express contract written or oral, but relies on the obligation arising out of the relationship which she entered into with the defendant. Her telephone service was satisfactory until late in December, 1946. From then until April 12, 1947, she made nineteen complaints to the defendant of faulty service. In the main her complaints were that customers and potential customers when calling her telephone received on many isolated occasions a busy signal when in fact her telephone was not in use, and that on many other occasions when her telephone number was called the bell did not ring. Because of these breaches of her arrangement with the defendant or because this failure of service was the result of negligence of the defendant she suffered financial loss.

The defendant had filed with the Department a rate schedule and regulations which were in effect during the period of these complaints, and this schedule and the regulations had been duly approved by the Department. One of these regulations here pertinent reads: "VI Failure of Service A. For any complete failure of local exchange service continued more than twenty-four hours and brought to the notice of the telephone company within ten days, the telephone company will make a pro rata adjustment of charge or guaranty." This regulation, which the plaintiff concedes was applicable to her service, was published in the telephone directories issued during the period in which these complaints arose. There was nothing in the statement of counsel for the plaintiff to indicate that on any occasion was there a failure of service which continued for as much as twenty-four hours, nor was there anything to indicate any specific time within which the failure of service was brought to the attention of the defendant.

The plaintiff contends that the court has jurisdiction of this action and that regulation VI A does not limit her right to recover for the failure of service of which she complains. The defendant argues to the contrary.

We assume without deciding that the court had jurisdiction to entertain this action and limit our consideration to the question as to whether or not regulation VI A precludes recovery.

[1] It has been clearly established

[1] Relevant parts of G.L.(Ter.Ed.) Chap 159 are set forth in a footnote to Department of Public Utilities v. New England Teleph. & Teleg. Co. (1950) 325 Mass 281, 282–284, 82 PUR NS 142, 90 NE2d 328.

that in some circumstances a judge is warranted in directing a verdict for the defendant if the opening statement of counsel for the plaintiff does not disclose evidence which, if taken to be true, would justify the jury in finding for the plaintiff. Douglas v. Whittaker (1949) 324 Mass 398, 86 NE2d 916; Noyes v. Shanahan (1950) 325 Mass 601, 91 NE2d 841. One of the counts in the plaintiff's declaration alleges wilful and wanton acts of the defendant and, if sustained by evidence, might require submission of this action to the jury. Ellis v. American Teleg. Co. (1866) 13 Allen, 226, 234. Nowhere in the opening statement, however, is there a sufficient allegation of facts from which the jury could infer or find any wilful or wanton misconduct on the part of the defendant. Aragona v. Parrella (1950) 325 Mass 583, 587, 91 NE2d 778. The plaintiff cannot recover on this count.

We are of opinion that the plaintiff is precluded from recovering on the other counts of her declaration because of regulation VI A.

[2] There is no doubt that it is the duty of the defendant to furnish service upon application and by virtue of the relationship which existed between the plaintiff and the defendant. This duty, however, is to be performed in accordance with the regulations of the defendant, which were approved by the Department and of which the plaintiff is presumed to have notice. Regulation VI A became an integral part of the relationship which the plaintiff entered into with the defendant, and the obligations of the defendant are limited by that regulation if it is a reasonable one. Mentzer v. New England Teleph. & Teleg. Co. (1931) 276 Mass 478, 484, 177 NE 549, 78 ALR 654; Pollock v. New England Teleph. & Teleg. Co. (1935) 289 Mass 255, 260, 261, 194 NE 133. The right of a common carrier, as the defendant is made by statute, to make rules and regulations, subject to the approval of the Department and the requirement of reasonableness, has been long recognized. A full and complete discussion of this principle is found in Ellis v. American Teleg. Co. (1866) 13 Allen, 226. There it was said, at p. 234, of a telegraph company, that there is nothing to "prevent parties from prescribing reasonable rules and regulations for the management of the business, or establishing special stipulations for the performance of service which, if made known to those with whom they deal, and directly or by implication assented to by them, will operate to abridge their general liability at common law, and to protect them from being held responsible for unusual or peculiar hazards which are incident to particular kinds of business."

[3] Because of the complexities and intricacies of the modern telephone system in which the personal element has been substantially eliminated and much if not all of the means of making usual telephone calls is left to mechanical devices, such a regulation is not unreasonable. There are so many ways by which the failures of service of which the plaintiff complains could occur that the defendant ought not to be held liable unless, as the regulation provides, such failure continued for at least twenty-four hours.

There is no merit in the contention of the plaintiff that this regulation applies only when there has been a con-

tinuous failure of service for more than twenty-four hours. This regulation is not solely a limitation of damages in case of failure of service. Its purpose is rather to limit and define the duty of the defendant to supply service. It sets out what type of service the defendant will supply and the scope of the service it undertakes to furnish. It completely covers the field.

The regulation was not unreasonable, and because the failure of service did not on any occasion exist for as much as twenty-four hours the plaintiff cannot recover. Any other result might invite and encourage litigation which, because of increased costs to the defendant might ultimately effect an increase in rates for telephone service. By Chap 159 rates and regulations are indissolubly bound together. When the Department approved regulation VI A, it must have had in mind its effect on rates and no modification of the regulation may be countenanced. It is an effectual bar to this action.

Judgment for the defendant.

LOUISIANA PUBLIC SERVICE COMMISSION

Louisiana Public Service Commission

v.

Louisiana & Arkansas Railway Company et al.

No. 5468, Order No. 5618
February 2, 1951

PROCEEDING *relating to practice of requiring surety bonds on movements of circuses and show outfits by railroads; dismissed.*

Carriers, § 2 — Requirement of surety bond — Movement of circuses and show outfits.

A railroad company is not prohibited by law from requiring surety bonds for the protection of the carrier in connection with the movement of circuses and show outfits.

By the COMMISSION: In this proceeding the Commission directs the Louisiana and Arkansas Railway Company-Kansas City Southern Railway Company to show cause why it should not be required to discontinue its practice of requiring surety bonds on movements of circuses, show outfits, etc.

The matter was heard by the Commission in regular session held at Baton Rouge on December 13, 1950.

No representatives of any circuses, street carnivals, or other similar organizations appeared. The Commission directed the respondent to set forth its position on briefs and such briefs have now been filed.

The contention of respondent is that circuses and similar organizations are moved under a special form of contract which has been approved by this Commission in its Order No. 32 of April 21, 1922. This order prescribed a scale of rates "to govern the transportation of circuses and show outfits between points within the state of Louisiana" when same are transported in cars and equipment privately owned and not furnished by the carriers. The order further provides that the customary form of circus or show contracts may be used in connection with such rates. Respondent contends that under such conditions, it acts not as a common carrier but in the capacity of a private carrier and that it is necessary for its own protection to require the filing of such surety bonds, particularly in view of the fact that many such small show organizations are financially irresponsible. Many court decisions support this view and the established rule appears to be that when a common carrier engages to handle such movements, it may do so under special arrangements within its discretion. This rule seems to be established in Santa Fe, P. & P. R. Co. v. Grant Brothers Construction Co. (1913) 228 US 177, 57 L ed 787, 33 S Ct 474.

It does not, therefore, appear to the Commission that there is any prohibition in law to prevent respondent from requiring surety bonds in connection with the movement of circuses and show outfits, and it is accordingly

Ordered, that this proceeding be and the same is hereby dismissed.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

P. G. & E. Construction Over Billion Dollar Mark

THE Pacific Gas and Electric Company has increased its postwar expansion investments, made or contemplated, to $1,013,816,000 by ordering four additional steam-operated electric generators which, with companion equipment, will cost $86,000,000.

These giants will have capacities of 125,000 kilowatts (167,600 horsepower) each—a total of 500,000 kilowatts (670,400 horsepower). The four could supply all the electric needs of a city of one million. They will be installed at locations yet to be determined and will be in operation by the spring of 1954.

From V-J Day, in 1945, to the end of 1950 the P. G. and E. invested $663,816,000 in new facilities and in the next three years it plans to spend $350,000,000 more.

Conn. Lt. & Pwr. to Install Four G-E Gas Turbine Power Plants

FOUR gas turbine power plants, first to be installed in the state of Connecticut, will be placed in service early in 1953 by the Connecticut Light and Power Company, R. H. Knowlton, president, announced recently.

Order for the four gas turbine units has been placed with the General Electric Company. They will be built in Schenectady, New York, in a company shop which has been newly equipped at a cost in excess of $4,000,000 for the exclusive production of gas turbine plants.

These four gas turbines, with a total capacity of over 20,000 kilowatts of electric power, will be used for emergency stand-by power and for peak-load service, Mr. Knowlton said.

Device for Office Duplicating Machines

OFFICE duplicating machines will now be able to reproduce printed material on paper stocks they would not dare to try before, and with a quality approaching that of lithographers and printers, according to the Michael Lith Company of New York.

Through the use of a device called Anti-Offset Jobmaster, a spray of very fine dry powder makes an invisible coating on every sheet that comes out of the Multilith or Davidson duplicating machine. The powder keeps the sheets separated from each other to prevent offsetting, thus permitting the office machine to run coated and card stock, previously too difficult to handle successfully without this spray. Among the other benefits claimed for the Jobmaster are better ink coverage and reduced paper spoilage.

A demonstration or descriptive literature may be obtained from the Michael Lith Company, 145 West 45th street, New York 19, New York.

I-H Issues Folders on Diesel Engines

FOUR two-page folders presenting operating and construction features of International diesel engines are being distributed by the International Harvester Company. These folders offer detailed information on reserve torque control, all-weather gasoline conversion starting, combustion control, and long-life lubrication.

The titles and form numbers of these folders are: Long-Life Lubrication, CR-131-A; Combustion Control for Economical Power, CR-132-A; Fast All-Weather Starts, CR-130-A; and Pull Through Overloads, CR-133-A.

A-P Controls Celebrates 20th Anniversary

IN 1931 the Automatic Products Company of Milwaukee opened its operations in crowded second-floor factory quarters in downtown Milwaukee. The company's first products were controlling devices and heat regulators.

Six months after the company was founded by Roy W. Johnson, the plant had tripled its factory space and had "expanded" its personnel roster to 45 employees.

This year, A-P Controls—the name which Automatic Products adopted last October—celebrates its 20th anniversary. And from its modest origin has grown a company that has two huge Milwaukee plants, a Canadian branch, and a total work force of more than 1,050 employees.

A-P Controls today manufactures a variety

(*Continued on Page* 34)

of controls for gravity-fed oil burners and is the largest maker of oil-level controls for space heaters. Another division produces automatic and thermostatic expansion valves for refrigeration systems, as well as other refrigeration controls, including solenoid valves in all sizes, water regulating valves, constant pressure valves, strainers and dryers.

In addition, new types of controls for gas furnaces and heaters recently developed by the company have found wide acceptance in the gas-heating industry.

Vacuum Ash Handling System Eliminates Manual Handling

BEAUMONT BIRCH COMPANY, Philadelphia, Pennsylvania, designed and furnished an 8 in. full "Vac-Veyor" ash handling system for the new electric power plant addition of Jamestown, New York. According to the manufacturer, the system eliminates the need of manually handling the ash, and reduces maintenance and supervision to a minimum. Ash, fly ash, soot, and dust are conveyed in a dry condition by means of vacuum through pipes from the intakes to a receiver on top of an ash storage silo. The vacuum is created by a steam exhauster located beyond the ash receiver. At no time does the ash come in contact with the steam.

Lundgren Named Vice President Of The Kuljian Corp.

ROBERT M. LUNDGREN has been appointed vice president of The Kuljian Corporation, international engineering and construction firm, according to an annoucement by James L. Cherry, executive vice president. For the past five years, he has been closely associated with new engineering and construction projects. In his new capacity he will have charge of the sales program of The Kuljian Corporation, which maintains branch offices in five foreign countries in addition to its offices in Philadelphia and Washington.

Alabama Power Plans to Build $30,000,000 Plant

THOMAS W. MARTIN, chairman of the board, Alabama Power Company, announced recently that, to meet the ever-growing industrial and defense loads, the company will file with the Alabama Public Service Commission an application to build near Mobile another steam-electric power plant to cost approximately $30,000,000.

The new plant will be designed so that ultimately it could have a capacity of one million kilowatts. The initial capacity will

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be 250,000 kilowatts in two 125,000 kilowatt units designed to operate at a steam pressure of 1,800 pounds per square inch. These units will be built by the General Electric Company and the first unit is expected to be in operation late in 1953, and the second in 1954. The estimated consumption of coal for the first two units is 800,000 tons per year.

The total capacity of the company's generating plants, when the present construction program is completed, will be 1,385,000 kilowatts, an increase of 806,000 kilowatts over the capacity in service in 1940.

Health Drive Launched by Gas Appliance Group

A NATIONWIDE "health-for-strength" campaign, stressing the particular need for physical fitness and reduction of disease during the national emergency, was announced recently by the water heater division of the Gas Appliance Manufacturers Association.

In launching the campaign, GAMA reported that it will distribute a million copies of a 30-page brochure entitled "Our Health—Our Strength" with the coöperation of other health-minded public and private organizations. The brochure has been reviewed by the Department of Defense, the announcement continued, as well as by the U. S. Public Health Service. Utilities, insurance companies, trade associations, and state and local health agencies will lend their support to further distribution.

The brochure emphasizes the current urgent need for improved health standards and points out the importance of personal and household cleanliness and the value of hot water at proper temperatures in stemming the spread of germs. In addition, the brochure cites health rules specifically prepared for the GAMA campaign by the U. S. Public Health Service.

New Literature Features Pump Motors

E-M SYNCHRONIZER NO. 33, latest in the series of quarterly publications by the Electric Machinery Mfg. Company, deals with large pumps and the application of a-c motors to them.

In an illustrated lead article by George R. Thompson, city engineer for the city of Detroit, Michigan, the new Detroit storm water pumping project is discussed. Other articles cover applications of large a-c motors to centrifugal pumps, cooling water pumping in the petroleum industry, "power house" insulation treatment, and the use of the variable speed Magnetic Drive on pumping applications.

This 2-color, 24 page booklet, fully illustrated throughout, contains much helpful engineering information, charts and diagrams, plus photographs of many of the pumping installations in the country.

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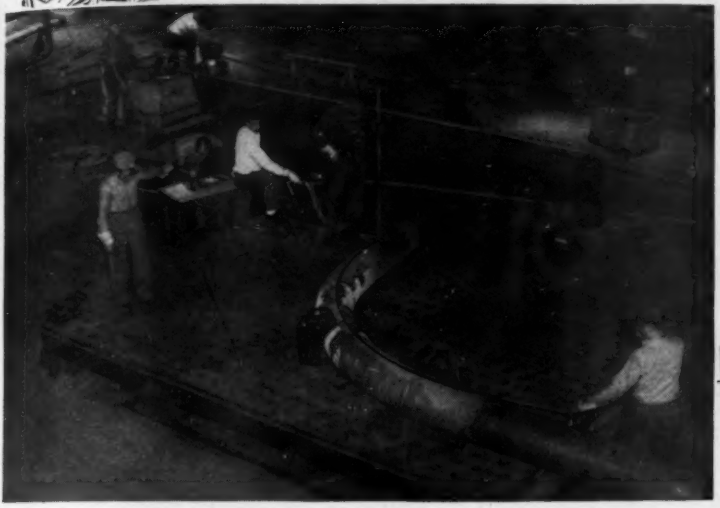

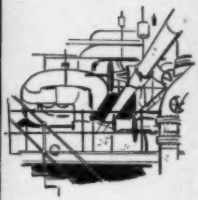

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The bending operation illustrated above is an example of Grinnell QUALITY CONTROL *in action* . . .

The tubing shown is made from a chromium alloy steel forging, turned and bored. Outside diameter is 14¾ inches; wall thickness 2⅜ inches. Temperatures of the tubing within the bending furnace were maintained and controlled within 20°F of specified temperatures. Bending was done with such skill and rapidity as to permit a temperature drop of only 100°F at the inside surface of the tubing. Maximum thinning was only .06 inch.

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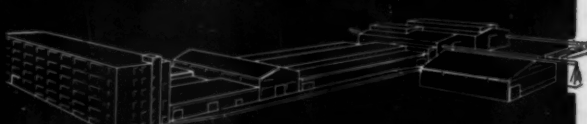

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PROFESSIONAL DIRECTORY (*continued*)

PROFESSIONAL DIRECTORY (*continued*)

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PROFESSIONAL DIRECTORY *(concluded)*

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

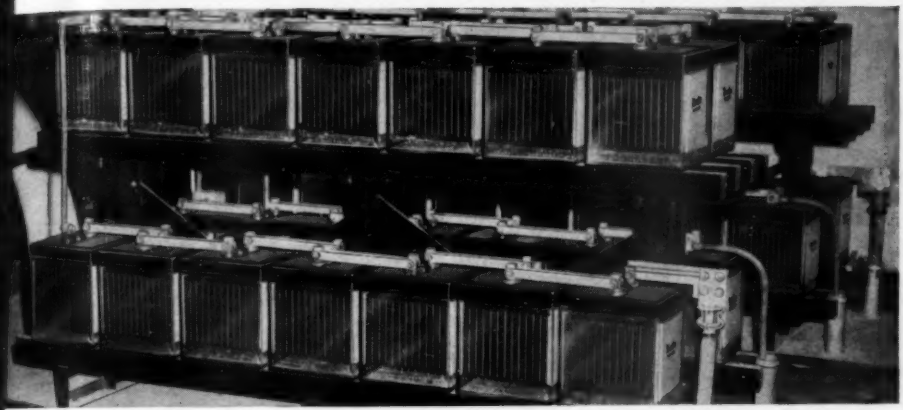
*Fortnightly advertisers not in this issue.

Exide-Manchex

provides the dependability needed by this Station Duty Cycle

Green River Power Station uses 60-cell Exide-Manchex to control switchgear, to supply power for emergency lighting, alarms and communication systems

Kentucky Utilities Company
Green River Power Station, Central City, Ky.



60-cell EME-25 Exide-Manchex Battery controlling switchgear and supplying emergency power in the Green River Station.

The Green River Power Station, a modern base load plant of the Kentucky Utilities Company, utilizes two 30,000 KW turbine-generators. It supplies power for important communities and industries in the surrounding territory through three radiating 33 KV lines, two 66 KV lines, and one 138 KV line.

The station battery—a 60-cell EME-25 Exide-Manchex—is used as a source of supply to trip and to instigate the reclosing action of seven 66 KV and four 33 KV oil circuit breakers. These are pneumatic closing, with the battery supplying power to operate the air valve which closes the breaker. Inside the plant are 31 air circuit breakers operating at 2.4 KV. These breakers are also controlled by the Exide-Manchex. The air breakers control all motors of 100 H.P. and up; all station auxiliary power. And when all else fails, a battery-operated motor-driven oil pump maintains pressure in the hydrogen oil-seal system.

Besides the switchgear control, the Exide-Manchex supplies power for 14 KW of emergency lights, which are on a throw-over switch; all alarms in the station system; and, in emergencies, all communication systems through a rotary converter.

All these duties are performed dependably—economically—by the Exide-Manchex Battery. Use Exide-Manchex in your station: For positive operation of switchgear; for an adequate and uninterrupted supply of current for all your stationary battery requirements. Exide-Manchex is your best battery buy!

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Installation and maintenance costs for "CS (Completely Self-Protecting) Transformers always lower, because complete protective equ ment is built in, not separately mounted. A tw year survey of Electric Light and Power Co panies shows the following:

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Installation Costs	$13.87	$26.74
Burn-out Rate	0.257%	1.005%
Fuse Outages	None	5.64% (at $6.52 per ou
Load Checks	Automatic	12.8%
Breaker Reset	1.02%	None

If you'd like to check your own costs against th national averages, ask your Westinghouse represent for Booklet B-4247-B, "Transformer Costs and Th Relation to Profits". Westinghouse Electric Corporat P. O. Box 868, Pittsburgh 30, Penna.

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